(7)

No. 99-5746

FILED
OCT 13 1999
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

# Supreme Court of the United States

LONNIE WEEKS, JR.,

*Petitioner,*

v.

RONALD ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS,

*Respondent.*

**On Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit**

## JOINT APPENDIX
## VOLUME I, PAGES 1 TO 188

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**Petition For Writ Of Certiorari Filed On August 16, 1999**
**Certiorari Granted On September 1, 1999**

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**General Docket**
**Fourth Circuit Court of Appeals**

98-21 98-21

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Court of Appeals Docket #: 98-21 Filed: 7/21/98
Nsuit: 0
Weeks v. Angelone

Appeal from: Eastern District of Virginia at Norfolk

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Lower court information:

District: 0422-2 : CA-96-829-2
Presiding Judge: Rebecca B. Smith, District Judge
Court Reporter: Sue Ash, Official Court Reporter
Court Reporter: Horace P. Weiss, Official Court Reporter
Court Reporter: John Cox, Court Reporter Coordinator
Date Filed: 8/14/96
Date order/judgment: 6/19/98
Date NOA filed: 7/17/98
District: 0422-2 :
Date Filed: **/**/**
Date order/judgment: 4/1/98
Date NOA filed: **/**/**

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Fee status: Criminal Justice Act

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Prior Cases:
None
Current Cases:
None

LONNIE WEEKS, JR.
Petitioner – Appellant

v.

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Respondent – Appellee

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LONNIE WEEKS, JR.

Petitioner – Appellant

v.

RONALD J. ANGELONE, Director of the Virginia Department of Corrections

Respondent – Appellee

| | |
|---|---|
| 7/21/98 | Death Penalty case docketed. (beth) |
| 7/21/98 | CLERK ORDER FILED appointing Sterling Harrisbe Weaver, Jr. as lead CJA counsel and Glen Alton Huff as CJA co-counsel for Appellant Lonnie Weeks [2810014-1]. Nunc Pro Tunc Date: 7/17/98. Copies to all counsel. [98-21] (beth) |
| 7/21/98 | Docketing notice issued. [98-21] (beth) |
| 7/24/98 | Counsel of record form filed by Robert Edward Lee for Appellant Lonnie Weeks. (beth) |
| 7/24/98 | Counsel of record form filed by Robert H. Anderson for Appellee Ronald J. Angelone. (beth) |
| 7/31/98 | Docketing statement filed by Appellant Lonnie Weeks [2818251-1]. T/S needed?: Y. T/S already on file?: N. [98-21] (beth) |
| 7/31/98 | Transcript order filed for Horace P. Weiss. [98-21] (beth) |
| 7/31/98 | Counsel of record form filed by Glen Alton Huff, Timothy Meade Richardson for Appellant Lonnie Weeks. (beth) |
| 8/3/98 | Transcript order acknowledgement filed. Transcript due on 9/9/98 for Horace P. |

Weiss. T/S certification due on 9/9/98 for Horace P. Weiss. [98-21] (beth)

9/3/98 Disciplinary proceedings notice issued to Sterling Harrisbe Weaver for Appellant Lonnie Weeks for COR default. [98-21] Document due by 9/18/98. (beth)

9/3/98 Certification transcript filed in district court by Horace P. Weiss on 8/27/98. [98-21]. (beth)

9/3/98 Briefing order filed. [98-21] Appellant(s) brief/joint appendix due 10/13/98 for Lonnie Weeks. (beth)

9/9/98 Counsel of record form filed by Sterling Harrisbe Weaver for Appellant Lonnie Weeks. (beth)

9/14/98 Certification of ROA complete and retained in the District Court. [98-21] (beth)

10/5/98 Motion (unopposed) filed by Appellant Lonnie Weeks to file oversize appendix of 2,160 pages [2857264-1]. [98-21] (beth)

10/5/98 CLERK ORDER FILED granting motion to file oversize appendix of 2,160 pages. [2857264-1] Copies to all counsel. [98-21] (beth)

10/13/98 Brief joint appendix filed by Appellant Lonnie Weeks. Type of Service: CD Copies of brief: 6 # brf pages: 53 Copies of apx: 5 of Vols. 1-5 # apx pages: 2,118 Sufficient? [Y/N]: Y 2-sided copying: Y SEALED? [Y/N]: N [98-21] Appellee brief due 11/12/98 for Ronald J. Angelone. (beth)



10/16/98 Motion filed by Appellant Lonnie Weeks for certificate of appealability [2864565-1]. [98-21] (beth)

10/16/98 CLERK ORDER FILED calendaring case for oral argument on Monday, January 25, 1999, in Richmond, Virginia. [2864566-1]. Copies to all counsel. [98-21] (beth)

10/29/98 Motion (unopposed) filed by Appellant Lonnie Weeks to extend time to file appellee(s) brief until 11/30/98 [2873373-1]. [98-21] (beth)

10/30/98 Record on appeal filed. Pleadings: Vols. 1-3 Transcript: Vol. 4. State Court Records: Vols. 5-63 No. of boxes: 4. [98-21] (ldj)

11/3/98 Case calendared for oral argument. [98-21] (jc)

11/4/98 COURT ORDER filed granting motion to extend time to file e's br [2873373-1] Appellee(s) brief now due 11/30/98 for Ronald J. Angelone. Copies to all counsel. [98-21] (beth)

11/13/98 CLERK ORDER FILED continuing oral argument. [2881640-1]. Argument continued until the week of March 1 through March 5, 1998. Copies to all counsel. [98-21] (beth)

11/19/98 Criminal Justice Act 31 voucher issued to Lawyers Printing & Research. D06786. [98-21] (ff)

12/1/98 Brief filed by Appellee Ronald J. Angelone. Type of Service: PM Copies: 8 # brf pages: 50. Sufficient [Y/N]: Y. SEALED?. N. [98-21] (beth)

| | |
|---|---|
| 12/11/98 | Supplemental authorities (FRAP 28(j)) filed by Appellant Lonnie Weeks [2898289-1]. [98-21] (beth) |
| 12/17/98 | Reply brief filed by Appellant Lonnie Weeks. Type of Service: PM Copies of brief: 6 # brf pages: 29. Sufficient [Y/N]: Y. Sealed? N. [98-21] (beth) |
| 12/17/98 | Criminal Justice Act 31 voucher filed by Lawyers Printing & Research. Voucher #: D06786. [98-21] (ff) |
| 12/18/98 | Case tentatively calendared for oral argument Place: Richmond. SUBMISSION DEADLINE: December 28, 1998. (jle) |
| 1/4/99 | Case calendared for oral argument. [98-21] (jc) |
| 2/25/99 | Supplemental authorities (FRAP 28(j)) filed by Appellee Ronald J. Angelone [2940508-1]. [98-21] (beth) |
| 3/1/99 | Oral argument heard. Robert H. Anderson for Appellee Ronald J. Angelone, Timothy Meade Richardson for Appellant Lonnie Weeks Courtroom Deputy: JPH. [98-21] (jph) |
| 5/10/99 | Published, authored opinion filed. [98-21] (beth) |
| 5/10/99 | Certificate of appealability denied by the Fourth Circuit. [98-21] (beth) |
| 5/10/99 | Opinion ruling denying motion for CAP [2864565-1]. [98-21] (beth) |
| 5/10/99 | Judgment order filed. Decision: Certificate of Appealability Denied – Appeal Dismissed. [98-21] (beth) |



| | |
|---|---|
| 5/10/99 | Criminal Justice Act 30 voucher # D64999 issued to Sterling Harrisbe Weaver. [98-21] (beth) |
| 5/10/99 | Criminal Justice Act 30 voucher #D65000 issued to Glen Alton Huff. [98-21] (beth) |
| 5/24/99 | Petition filed by Appellant Lonnie Weeks for rehearing. Number copies filed: 20 [2992016-1]., for rehearing en banc. Number of copies filed: 20 [2992016-2] [98-21] (beth) |
| 6/4/99 | COURT ORDER filed denying motion for rehearing [2992016-1] EOD Date: 6/4/99., denying motion for rehearing en banc [2992016-2] EOD Date: 6/4/99. Copies to all counsel. [98-21] (ldj) |
| 6/14/99 | Mandate issued. [98-21] (beth) |
| 6/15/99 | Record on appeal returned to USDC at Norfolk. Pleadings: Vols. 1 – 3 T/S: Vol. 4 State Court Records: Vols. 5 – 63 No. of boxes: 4 [98-21] (ejm) |
| 6/16/99 | SUPPLEMENTAL Criminal Justice Act 30 voucher # D65000 issued to Glen Alton Huff. [98-21] (beth) |
| 6/16/99 | SUPPLEMENTAL Criminal Justice Act 30 voucher # D64999 issued to Sterling Harrisbe Weaver. [98-21] (beth) |
| 7/22/99 | Response/answer filed [3026170-1] by Appellee Ronald J. Angelone to motion to recall the mandate [3026073-1], motion to stay execution of sentence [3026073-2] [98-21] (dhb) |
| 7/23/99 | Motion filed by Appellant Lonnie Weeks to recall the mandate for consideration of stay |

request [3026073-1]; to stay execution of sentence [3026073-2]. [98-21] (dhb)

8/3/99 COURT ORDER filed denying motion to recall the mandate [3026073-1], denying motion to stay execution of sentence [3026073-2] Copies to all counsel. [98-21] (beth)

8/20/99 Supreme Court notice that petition for certiorari was filed on 08/16/99. Spct No.: 99-5746 Spct Pty 1: Lonnie Weeks, Jr. Spct Pty 2: Ronald J. Angelone, Dir., VDOC. [98-21] (cw)

8/24/99 CJA deadline(s) created/updated. [98-21] Follow-up due 9/7/99 for Timothy Meade Richardson (beth)

8/31/99 DUPLICATE Criminal Justices Act 30 voucher # D56000 issued to Glen Alton Huff. [98-21] (beth)

8/31/99 CJA deadline(s) created/updated. [98-21] Follow-up due 9/14/99 for Timothy Meade Richardson (beth)

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LONNIE WEEKS, JR.,

*Petitioner,*

v.

RONALD ANGELONE, DIRECTOR,
VIRGINIA DEPARTMENT OF CORRECTIONS,

*Respondent.*

* * *

PRINCE WILLIAM COUNTY CIRCUIT COURT

shows a degree of moral turpitude and physical debasement surpassing that inherent in the definition of ordinary legal malice and premeditation, could adequately be punished by a sentence less than death?

9. Do you believe a person, who in the act of murdering someone shows a degree of moral turpitude and physical debasement surpassing that inherent in the definition of ordinary legal malice and premeditation, could adequately be prevented from seriously endangering society by a sentence less than death?

10. Do you believe a person, who in the act of murdering someone commits a battery which, qualitatively and quantitatively, is more culpable than the minimum necessary to accomplish an act of murder, could be rehabilitated?

11. Do you believe a person, who in the act of murdering someone commits a battery which, qualitatively and quantitatively, is more culpable than the minimum necessary to accomplish an act of murder, could adequately be punished by a sentence less than death?

12. Do you believe a person, who in the act of murdering someone commits a battery which, qualitatively and quantitatively, is more culpable than the minimum necessary to accomplish an act of murder, could adequately be prevented from seriously endangering society by a sentence less than death?

13. Do you promise to seek further instruction from the judge if you do not fully understand the meaning of any of the instructions he gives you?

14. Do you promise to seek further instruction from the judge if there is a disagreement among jurors as to the meaning of any of the instructions the judge gives you?

15. Were the school or schools you attended racially integrated?

16. Do you approve of intermarriage between races?

17. Do you believe in affirmative action?

18. Do you belong to any social clubs or other organizations which have members of racial or ethnic minorities?

19. If so, which minorities?

20. Does the church where you worship have any members of racial or ethnic minorities?

21. If so, which racial or ethnic minorities?

22. Do you send your children to public or private schools?

23. Why?

24. If you [sic] child attends private school, does that school have students who are of racial or ethnic minorities?



25. If so, which minorities?

27. Would you approve of a member of your family marrying a person of your race?

28. Would you approve of a member of your family marrying a person of a different race?

29. Do you believe that persons of African descent are more likely to commit crimes than persons of other races?

30. Exactly what work do you do in your employment?

31. What formal education have you had?

32. If you went to college, what was your major?

33. Do you have any hobbies or other leisure activities?

34. If so, what are they?

35. Do you have any children?

36. Are you familiar with firearms?

37. Do you own any firearms?

38. Do you hunt or shoot for recreation?

39. Do you belong to any gun clubs or similar organizations?

40. Have you ever done anything under fear or stress which you later regretted doing?

41. Do you believe that a person can commit an act in fear and panic which is out of character for him or her?

42. Are you now or have you ever been in the military service?

43. Do you have any religious convictions which either support or disapprove of the death penalty?

44. If so, please describe the conviction or convictions.

44[A]. Do you believe that if the defendant were sentenced to ~~death~~ [life] he would spend the remainder of his life in prison?

45. Do you believe that if the defendant is sentenced to death that the sentence will be carried out?

46. Do you believe that young people generally act more impulsively than older people?

47. Could you consider a defendant's youth as a factor which might justify a sentence less than death?

48. Could you consider a defendant's loss of a father or mother at a young age as a factor which might justify a sentence less than death?

49. Could you consider a defendant's remorse as a factor which

* * *

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

* * *

[172] It probably depends on what the evidence is. If that person has five or six previous felony convictions, maybe they wouldn't.

On the other hand, if that person has never had a run in, at all, with the law, maybe they would.

There is just no factual basis. And the questions are just wide open and left to be argumentative.

The Court will deny, then, one through twelve, for the reasons as I have indicated.

MR. MORISSETTE: Please note my objection, Your Honor, based on the Fifth, Sixth, Eighth and Fourteenth Amendments –

THE COURT: It will be so noted.

MR. MORISSETTE: – to the Constitution of the United States, Your Honor.

THE COURT: We will start then with thirteen.

MR. WILLETT: Your Honor, we object to that, because we think it may be misleading to the Jury and give them a false impression.

'Do you promise to seek further instructions from the Judge if you do not fully understand the meaning of any of the instructions he gives you?'

Well, Your Honor may not be able to give

* * *

[174] we've said in questions one through twelve.

And that Jurors will have a hard time understanding those things. And we don't want to be in a situation where a Jury is back there discussing things, and they feel like they need to determine what the legal meaning of the instructions is.

Yes; they can make certain factual findings. But they should seek further guidance from the Court if the meaning of the instructions is not clear to them or a disagreement arises.

The Defendant, again, has the right to have the Jury properly instructed on the law. This is just a question to make sure the Jurors that are eventually empaneled understand that they do have the right to seek further guidance from the Court on issues of the instructions given by the Court.

THE COURT: All right, sir; I'll grant thirteen. Let's go to fourteen.

MR. WILLETT: Judge, I would have the same objection with respect to fourteen, and an additional one. Because it talks about disagreement among the Jurors.

And I think it's improper for counsel to ask a [175] question that invites disagreement among the Jurors, citing Pruitt versus Commonwealth. And I object to it for that reason.

THE COURT: Do you wish to respond, sir?

MR. MORISSETTE: It's, basically, the same argument, Your Honor. It's stated in a hypothetical, not –



if I had used the word, 'when there is disagreement', I think, that suggests that there's going to be disagreement.

This just says, 'if'.

THE COURT: Well, I'm going to deny fourteen. I think thirteen covers it. Because thirteen tells them, if they do not fully understand.

If they understand, there's not going to be any disagreement. If you have disagreement, that means they're not going to understand.

And I think we're just, again, it covers the same thing. I think, if they have a problem with an instruction, we've told them to come for further instructions.

And I think that's sufficient.

Fifteen, sir

MR. WILLETT: Your Honor, fifteen through

* * *

[214] that they can enter the jury box with an open mind and wait until the entire case is presented, before reaching a fixed opinion or conclusion as to the guilt or innocence of the accused.

I think that is the standard question to be asked.

MR. BAKER: Well, Your Honor, again, we have a difference of opinion here. I believe that I am entitled to find out whether the Jurors have, in fact, an opinion as to the Defendant's guilt.

THE COURT: Well, that, I'm giving you, counsel. That's not the issue. You want to then find out what is their opinion.

If I understand it, that's what your question says.

MR. BAKER: No.

THE COURT: 'If so, what is that opinion?' I've granted you your number fifty-seven. Number fifty-eight is, what is the opinion.

MR. BAKER: You granted fifty-six, Your Honor?

THE COURT: I beg your pardon?

MR. BAKER: You granted fifty-six and fifty-seven, correct?

• • •

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

• • •

[42] an offense punishable with death?

JURY PANEL: (Indicating in the negative.)

THE COURT: Is there any juror among you who could never vote to impose the death penalty or who would refuse even to consider its imposition in this case?

JURY PANEL: (Indicating in the negative.)

THE COURT: If you were to sit as a juror in this case and the jury were to convict the Defendant of capital murder, would you be able to consider voting for a sentence less than death in this matter?

MS. NELSON: Yes.

THE COURT: Would the other jurors be able to consider some sentence less than death, even though there had been a conviction of capital murder? Have I confused you in the question?

JURY PANEL: (Indicating in the affirmative.)

THE COURT: I'm sorry. First I've asked you whether or not – I asked you was there any juror among you who would never be able to impose the death penalty or who would refuse even to consider it, and you've told me that you would consider it and that you could impose it.

Now I'm asking you the reverse question. Could you consider the imposition of a life sentence as [43] opposed

to the death penalty, even though you may have convicted the Defendant of capital murder? Could you consider life as well as death?

MR. LETSON: You said if circumstances warrant it?

THE COURT: That's correct, sir. You could consider it?

JURY PANEL: (Indicating in the affirmative.)

THE COURT: Do each of you understand that the Commonwealth must prove the Defendant's guilt beyond a reasonable doubt?

JURY PANEL: (Indicating in the affirmative.)

THE COURT: Do each of you understand that the Defendant is not required to produce evidence? Each of you understand that, that he is not required to produce any evidence in this matter; the burden is on the Commonwealth. You understand that?

JURY PANEL: (Indicating in the affirmative.)

THE COURT: Do you know of any reason whatsoever why you could not sit and give a fair and impartial trial to the Commonwealth and to the accused, based solely on the law which I will give you and the evidence that you will hear and see in this courtroom?

* * *

[46] MR. EBERT: In the trial we have what we call a bifurcated proceeding. It means that you will hear evidence as to whether or not the Defendant is guilty or innocent. If you find that the Defendant is guilty, then



you would come back and hear more evidence and determine whether or not you feel the death penalty is appropriate. Do you understand that?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: Will you be willing to consider all the evidence of both aspects of this trial proceeding?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: If you find the Defendant guilty, you must find him guilty beyond a reasonable doubt. Do you understand that?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: And because this is a capital case the burden is the same in this case as it is in any other case, no more or no less; it must be guilty beyond a reasonable doubt. Do you understand that?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: I think the Court has asked you this, but I'm going to ask you. Do any of you have any moral, ethical or religious scruples or personal beliefs [47] against capital punishment?

JURY PANEL: (Indicating in the negative.)

MR. EBERT: I think you've answered this likewise, but if the Defendant were to be convicted there would be two options under the law to which he could be sentenced. One, of course, would be the death penalty and the other would be life imprisonment. Could you fully consider both of those options?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: It would depend upon the evidence and the circumstances and the law as to what penalty you impose; is that correct?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: And none of you would automatically vote against the death penalty; is that correct?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: Is there anyone who has any personal beliefs that would impair your performance as a juror in this case, even though you could impose either option? Any reason that you might have which would impair you to be fully fair and impartial to both the Commonwealth and the accused?

* * *

[59] The next question, if you were to convict the Defendant of the capital murder as charged, would you automatically vote for the death penalty?

MR. SCHREIBER: It depends on the circumstances of the whole case.

MS. NELSON: Correct, and the directions from the Judge.

MR. LETSON: No. It would depend on the circumstances.

MR. BAKER: Do you believe that younger people generally act more impulsively than older people?

MS. NELSON: No.



MR. FUDD: Yes.

MR. BAKER: I've got a no from Ms. Nelson and I've got a yes from Mr. Schreiber and Mr. Fudd and Mr. Letson.

MR. LETSON: I'm undecided. That's difficult for me to answer.

MR. BAKER: Could you consider a Defendant's youth as a factor in mitigation in determining a sentence in this matter? I'll restate the question.

Could you consider the fact that the Defendant is a young man as a factor in mitigation? Mitigating [60] means that somebody – it makes the offense less. The factor, as you say, concerning the circumstances that you all said you would consider. Could you consider his youth as one of those circumstances? Have I totally lost everybody?

MR. LETSON: I understand the question, but I'd say no.

MR. FUDD: I'd say no.

MR. BAKER: You couldn't consider that?

MR. LETSON: No, sir. I'm not sure – are we told how old he is?

MR. BAKER: Yes, sir.

Could you consider the Defendant's loss of a father or a mother at a young age as a factor in mitigation? Mitigation means something to lessen the punishment.

MS. NELSON: They're difficult to answer out of context.

MR. BAKER: I understand that. The answer is no, or no one can answer that question?

MR. LETSON: It would be difficult to answer.

MR. BAKER: You could consider all the facts and circumstances.

* * *

[75] you may have already stated?

JURY PANEL: (No response.)

THE COURT: Mr. Ebert?

MR. EBERT: Good morning. As the Court told you, I'm Paul Ebert. Mr. Willett and I are here on behalf of the Commonwealth and Mr. Baker and Mr. Morissette are here on behalf of the Defendant. All of us appreciate you coming here today and giving up your valuable time.

You all understand that this is a capital offense which carries a potential death penalty, do you not?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: And you understand, or maybe you don't, we have what we call a bifurcated proceeding. That means you would hear evidence of guilt or innocence, and if you determined, in fact, that the Defendant was guilty, then you would have a further proceeding to determine what would be the appropriate punishment. Do you understand that?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: Will all of you be willing to consider all the evidence to be presented in both stages of the trial, assuming we have two stages?



[76] JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: You understand, as the Court has told you, you must find the Defendant beyond a reasonable doubt? Do you understand that's the same burden in this case as it is in any criminal case, and the fact that this is a capital murder case, would you require any more than you would in any other criminal case?

JURY PANEL: (No response.)

MR. EBERT: Would you answer that in the affirmative or do you understand the burden is the same in this case in any case? Do you understand that?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: I think two of you have indicated you don't feel you could impose the death penalty. Would that be based on religious scruples or personal beliefs?

MR. CORNWELL: I think God only can give life and take life myself.

MR. EBERT: I'll ask this question to the two of you. If the Defendant were to be convicted, there are two possible verdicts you could return. One would be the death penalty and the other would be life imprisonment. Could you consider both of those options and base your decision based on the law and the evidence that you will [77] hear in this proceeding?

MR. COUSINS: Yes.

MR. EBERT: Could you do that?

MR. STEWART: I'll do that.

MR. EBERT: And neither one of you – I think you've indicated, but neither one of you would automatically vote against the death penalty; is that correct?

MR. STEWART: Vote against it?

MR. EBERT: Vote against it, right.

MR. STEWART: No.

MR. EBERT: You would consider both options and consider all the evidence; is that correct?

MR. STEWART: Yes.

MR. EBERT: Sir, you indicated that you had seen some media coverage of some type. Could you put that aside and render your opinion based solely on what you hear presented in this courtroom?

MR. STEWART: Sir, I'd say that would be very difficult for me to do it.

MR. EBERT: Well, it may be difficult, but do you think that you could do that, sir?

MR. STEWART: I honestly don't think I could.

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[80] is?

MR. CORNWELL: Mr. Cornwell.

MR. BAKER: And you are Mr. Cousins?

MR. COUSINS: Yes.

MR. BAKER: The first question I have, would each of you seek further instruction from the Judge if you



did not fully understand the meaning of any instruction he gave in this case? In other words, if you didn't understand it, would you ask the Judge for further instruction?

JURY PANEL: (Indicating in the affirmative.)

MR. BAKER: The next question, would you disapprove of a member of your family marrying a person of a different race for that reason and that reason only?

MR. COUSINS: No.

MR. STEWART: No.

MR. BAKER: Is the answer no from everyone?

MS. COTMAN: Yes.

MR. BAKER: Do you believe persons of Afro-American or African descent are more likely to commit crimes than persons of other races?

JURY PANEL: (Indicating in the negative.)

MS. COTMAN: Definitely not.

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[86] convictions which either, shall we say, strongly support or strongly disapprove of the death penalty?

MR. COUSINS: No.

MR. BAKER: If you were to convict this Defendant of capital murder, as you have heard the charge, would you automatically vote to impose the death penalty?

MR. COUSINS: No.

MR. BAKER: Do you believe that younger people generally act more impulsively than we do when we get a little mature?

MR. COUSINS: That's my experience.

MR. BAKER: I'll just preface this. Mitigation is something that lessens the offense. That's what the term means in these questions I'm going to ask you.

Could you consider a Defendant's youth as a factor in mitigation in determining a sentence in this case?

MR. COUSINS: I guess I could.

MR. BAKER: This again goes to the mitigation factor, related to the same thing. Could you consider a Defendant's loss of a father and mother at a young age as being a factor in mitigation? Could you consider that?

[87] MR. COUSINS: We're not talking recently, we're talking –

MR. BAKER: At a young age. Could you consider that as a factor?

MR. COUSINS: I don't think so.

MR. BAKER: Could you consider a Defendant's remorse, in other words, the fact that he was extremely sorry, that term as a factor in mitigation?

MR. COUSINS: That's possible.

MR. BAKER: Sir, have you or anyone you know personally been the victim of a serious crime?

MR. COUSINS: No, I can't say so.



MR. BAKER: Sir, have you read any newspaper articles about this case?

MR. COUSINS: I read the first one in the Potomac News, as I recall.

MR. BAKER: Sir, have you watched or listened to any broadcast news reports concerning this case?

MR. COUSINS: No.

MR. BAKER: Sir, based on what you have read, heard or viewed, have you formed an opinion as to the Defendant's guilt or innocence?

MR. COUSINS: No.

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[94] they could consider same; right?

MR. DOBYNS: Yes.

MS. ROGERS: Yes.

THE COURT: We'll proceed with the questioning. Is there any juror who could never vote to impose the death penalty or who would refuse to even consider the imposition in this case? I believe two of you have already answered that. The two who have not, you could consider it?

MS. ROGERS: Yes.

MR. DOBYNS: (Nodding head.)

THE COURT: Now, if you were to sit as a juror, and actually I will ask, I believe, Mr. Dobyns and Ms. Rogers. Let me address this question to the two of you predicated on the previous answer.

If you were to sit as a juror in this case and the jury were to convict the Defendant of capital murder, would you be able to consider voting for a sentence less than death, depending on the evidence?

MS. ROGERS: Yes.

MR. DOBYNS: Yes.

THE COURT: I'll ask all four of you additional questions. Do each of you understand that the

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[97] So at this time you're excused. You may go with the bailiff, if you would, please.

(Ms. Bonner and Ms. Crummett were struck for cause.)

THE COURT: Ms. Rogers and Mr. Dobyns, if you'll just remain seated, counsel are going to ask you a few more questions and then we'll proceed.

Mr. Ebert?

MR. EBERT: There are a few questions we would like to ask each of you concerning your qualifications to serve, and Mr. Willett and I particularly want to thank you for coming here and giving up your valuable time in this most important case.

You understand, of course, this is what we call a capital case and the law permits the imposition of the death penalty; is that correct?

(Ms. Rogers and Mr. Dobyns indicated in the affirmative.)



MR. EBERT: We have what we call a bifurcated proceeding. That means you would first hear evidence as to whether or not the Defendant is guilty or innocent. If you find the Defendant not guilty, that's the end of it. If you find the Defendant guilty, then you will hear [98] further evidence. Do you understand that?

(Ms. Rogers and Mr. Dobyns indicated in the affirmative.)

MR. EBERT: You would be willing to consider all the evidence in both proceedings?

(Ms. Rogers and Mr. Dobyns indicated in the affirmative.)

MR. EBERT: Not only in terms of guilt, but in affixing punishment?

(Ms. Rogers and Mr. Dobyns indicated in the affirmative.)

MR. EBERT: Do you understand you must find – the Court told you this and you've answered it, but you must find the Defendant guilty beyond a reasonable doubt?

(Ms. Rogers and Mr. Dobyns indicated in the affirmative.)

MR. EBERT: If you do not, of course, that's the end of it, and if you do, then you go further.

Do you understand that this burden is no different in this case than any other criminal case, that's the standard burden of proof?

(Ms. Rogers and Mr. Dobyns indicated in the affirmative.)

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[100] you have any moral, ethical or religious scruples or personal beliefs against capital punishment?

(Ms. Rogers and Mr. Dobyns indicated in the negative.)

MR. EBERT: If you were to find the Defendant guilty, you said you could consider the death penalty. You can likewise consider something less than death, could you not? In other words, you'd consider both options?

(Ms. Rogers and Mr. Dobyns indicated in the affirmative.)

MR. EBERT: And it would depend on the law and the circumstances and the evidence you will hear before you reach that decision?

(Ms. Rogers and Mr. Dobyns indicated in the affirmative.)

MR. EBERT: But there's no reason you could not consider both options; that would be life imprisonment or the death penalty; is that correct?

(Ms. Rogers and Mr. Dobyns indicated in the affirmative.)

MR. EBERT: Do you have any views that would impair your performance as a juror in this case, whether personal or religious or otherwise?

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[102] correct?



MS. ROGERS: I'm Ms. Rogers.

MR. BAKER: Again, I'll introduce myself, William Baker, and myself and Mr. Morissette represent the Defendant, and the questions aren't designed to embarrass you in any way, but to help us to select a proper jury that's going to sit in this case.

My first question, and I'll ask it together and then some will be individually. Would you seek further instruction from the Judge in this case if you did not fully understand the meaning of his instructions that he's given you?

(Ms. Rogers and Mr. Dobyns indicated in the affirmative.)

MR. BAKER: Would you disapprove of a member of your family marrying a person of a different race for that and that reason only?

(Ms. Rogers and Mr. Dobyns indicated in the negative.)

MR. BAKER: Do you believe that persons of an African descent are more likely to commit crimes than persons of other races?

(Ms. Rogers and Mr. Dobyns indicated in the

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[106] (Ms. Rogers and Mr. Dobyns indicated in the affirmative.)

MR. BAKER: The next three questions deal with something called mitigation. I'll define the term. Mitigation is something that lessens the offense. In other words,

you've done the offense, but because of these circumstances, you would consider it worthy of a lesser sentence. That's the best way I can define it.

I'll ask if you could consider these factors as matters in mitigation. Do you understand my definition?

(Ms. Rogers and Mr. Dobyns indicated in the affirmative.)

MR. BAKER: Could you consider youth as a factor in mitigation, the Defendant's youth?

(Ms. Rogers and Mr. Dobyns indicated in the affirmative.)

MR. BAKER: Could you consider the fact that he lost his mother and father at an early age as a factor in mitigation?

(Ms. Rogers and Mr. Dobyns indicated in the affirmative.)

MR. BAKER: Could you consider the fact that [107] he was remorseful as a factor in mitigation; remorse meaning sorry?

(Ms. Rogers and Mr. Dobyns indicated in the affirmative.)

MR. BAKER: Have you or anyone you know personally ever been the victim of a violent crime?

(Ms. Rogers and Mr. Dobyns indicated in the negative.)

THE COURT: Have you read any newspaper articles concerning this case?



MS. ROGERS: No.

MR. DOBYNS: Yes.

MR. BAKER: Have you watched or listened to any broadcast news reports concerning this case?

MS. ROGERS: Not that I remember, no.

MR. DOBYNS: No.

MR. BAKER: And, sir, based on what you've read, have you formed an opinion as to the Defendant's guilt or innocence?

MR. DOBYNS: No.

MR. BAKER: Have you or any member of your family ever been employed as a law enforcement officer? By that I mean police officers.

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[112] THE COURT: This is a capital murder case. It carries a possible death penalty. With that understanding, do you have an opinion such as would prevent you from convicting anyone of an offense punishable with death?

(Ms. Richardson, Ms. Ford and Mr. Trynock indicated in the negative.)

MS. MANNKE: Possibly.

THE COURT: Is there any juror who can never vote to impose the death penalty or who would refuse even to consider its imposition in a case?

JURY PANEL: (Indicating in the negative.)

THE COURT: So you would consider it?

MS. MANNKE: Yes, sir.

THE COURT: If you were to sit as a juror in this case and the jury were to convict the Defendant of capital murder, would you be able to consider voting for a sentence less than death? That would be life imprisonment.

JURY PANEL: (Indicating in the affirmative.)

THE COURT: Do each of you understand that the Commonwealth must prove the Defendant's guilt beyond a reasonable doubt?

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[114] is a very important function as a citizen.

Any question I ask you is not intended to embarrass you in any way. I think the Court has asked you basically most of the (inaudible).

I think all of you realize that the case before you permits the imposition of the death penalty, do you not?

JURY PANEL: (Indicating in the affirmative.)

THE COURT: We have what we call a bifurcated proceeding in this type of case. That means that you will hear evidence as to the guilt or innocence of the Defendant, and if you find the Defendant guilty beyond a reasonable doubt at that stage, then you will come back and hear more evidence before fixing punishment. Do you understand that?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: Would all of you be willing to consider all of the evidence that you hear before either



finding him guilty and likewise before fixing punishment?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: Do you understand that the burden on the Commonwealth is the same in this case as it is in any other criminal case; that is, we have to convict the

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[116] MR. EBERT: I'll address this to all of you. Could you likewise consider something less than death if you felt the law and the evidence justified that, that being in this case, if he is convicted it would be either the death penalty or life imprisonment? You could consider both options; is that correct?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: That's correct for each of you?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: The evidence in this case will be that the Defendant is black and the victim was Hispanic. Would the fact that these people were of different races have any effect whatsoever on your verdict?

JURY PANEL: (Indicating in the negative.)

MR. EBERT: You could be fair and impartial with respect to the fact that they're different races?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: Has anybody on the panel been employed by a law firm that practices criminal law?

(Ms. Richardson, Ms. Ford and Mr. Trynock indicated in the negative.)

MR. EBERT: I think you're a paralegal?

MS. MANNKE: Yes.

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[127] Defendant of the capital murder as charged, and you've heard the charge, would you automatically vote to impose the death penalty?

JURY PANEL: (Indicating in the negative.)

MR. BAKER: Do you believe that younger people are generally more likely to act impulsively than people as they get a little mature?

JURY PANEL: (Indicating in the affirmative.)

MR. BAKER: These next three questions deal with something called mitigation. Mitigation is something which serves to make the offense less serious, although it still is an offense. It's a factor like a first speeding ticket isn't as bad as the fifteenth speeding ticket. That's the best way I can describe it as far as the Court and the law is concerned. That's what mitigation means generally. So I'm asking you if you just could consider these as matters in mitigation.

Could you consider the Defendant's youth or his relative age as a factor in mitigation?

MS. MANNKE: No, sir.

MR. BAKER: You could not consider that?

MS. MANNKE: No.



MR. BAKER: Do you understand what I'm saying?

[128] MR. EBERT: She's answered that question, Your Honor.

MR. BAKER: Okay, she's answered. She said she couldn't consider it. Okay.

Could you consider the fact that he lost a father and mother at an early age as a matter in mitigation?

MS. MANNKE: No, sir.

MS. FORD: (Shaking head.)

MR. BAKER: Could you consider the Defendant's remorse as a factor in mitigation?

MS. MANNKE: No, sir.

MR. BAKER: Could any of you consider those as factors?

MR. TRYNOCK: I don't believe so.

MS. RICHARDSON: (Shaking head.)

MS. FORD: (Shaking head.)

MR. BAKER: Have you or anyone you know personally been the victim of a violent crime?

(Ms. Richardson, Ms. Ford and Mr. Trynock indicated in the negative.)

MR. BAKER: Ms. Mannke?

MS. MANNKE: I'm not sure if it's a violent

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[135] carries the possible death sentence. With that understanding, let me ask you this question. Do you have any opinions such as to prevent you from convicting anyone of an offense punishable with death?

JURY PANEL: (Indicating in the negative.)

THE COURT: Is there any juror who could never vote to impose the death penalty or who would refuse even to consider its imposition in this case?

JURY PANEL: (Indicating in the negative.)

THE COURT: If you were to sit as a juror in this case and the jury were to convict the Defendant of capital murder, would you be able to consider voting for a sentence less than death as well?

JURY PANEL: (Indicating in the affirmative.)

THE COURT: Do you understand that the Commonwealth must prove the Defendant's guilt's beyond a reasonable doubt?

JURY PANEL: (Indicating in the affirmative.)

THE COURT: Do each of you understand that the Defendant is not required to produce any evidence, the burden is on the Commonwealth?

JURY PANEL: (Indicating in the affirmative.)

THE COURT: Do you know of any reason

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[137] this charge permits the imposition of the death penalty. Do you understand that?



JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: We have what is known as a bifurcated trial in this proceeding. That means that you will hear evidence concerning the guilt or innocence of the Defendant. If you find the Defendant guilty, then you would hear more evidence that determines what would be the appropriate sentence.

If he is convicted of capital murder, you have two options; either to sentence the Defendant to death or to life. I take it that all of you could consider either option; is that correct?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: Do any of you have any religious, moral or personal scruples against the death penalty?

JURY PANEL: (Indicating in the negative.)

MR. EBERT: Do you understand that the burden of proof is on the Commonwealth to prove the Defendant guilty beyond a reasonable doubt in this case, as in every case? Do you understand that?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: Do you understand that the fact

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[141] determining our strikes, since the Judge asked who should sit on this jury. The questions I will ask will be together to the panel of four unless indicated that it's individual.

The first thing I need to do, the jury order, you're Ms. Willis; is that correct?

MS. HAYWARD: No; I'm Ms. Hayward.

MR. BAKER: Ms. Hayward, okay. Thank you. Ms. Willis?

MS. WILLIS: Yes.

MR. BAKER: And Mr. –?

MR. VUILLE: Vuille.

MR. BAKER: And Mr. Painter?

MR. PAINTER: Yes.

MR. BAKER: I would ask the panel as a whole, would you seek further instruction from the Judge in this case if you did not fully understand the meaning of the instructions which the Judge gives you?

JURY PANEL: (Indicating in the affirmative.)

MR. BAKER: Would you disapprove of a member of your family marrying a person of a different race for that reason only?

JURY PANEL: (Indicating in the negative.)

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[146] MR. BAKER: What service was that, sir?

MR. PAINTER: United States Navy.

MR. BAKER: What was your specialty?

MR. PAINTER: Aviation ground support.

MR. BAKER: Mr. Ebert has touched on this and I think you've all said that none of you have any religious convictions that either strongly support or prohibit the death penalty. Is that a correct statement?



JURY PANEL: (Indicating in the affirmative.)

MR. BAKER: Now if you were to convict this Defendant of the capital murder as charged, would you automatically vote for the death penalty?

MS. HAYWARD: If necessary.

MR. BAKER: I mean, the Judge has told you what the charge is and what I'm stating – I'll ask you the question. If you were to find the Defendant guilty of this charge, which the Court has read, would you automatically vote for the death penalty without considering anything else?

JURY PANEL: (Indicating in the negative.)

MR. BAKER: Do you believe that younger people are a little more likely to act impulsively than those that get more mature?

[147] JURY PANEL: (Indicating in the affirmative.)

MR. BAKER: Now the next question I'm going to talk about, all of them are general facts and they deal with something called mitigation. Mitigation is something that can be considered with respect to sentence, not with respect to guilt or innocence, but with respect to sentence.

In other words, somebody who has done something, but because they have a good record and have never done this before, it should be a factor in considering their sentence.

Do you all understand what I mean by the term mitigation?

JURY PANEL: (Indicating in the affirmative.)

MR. BAKER: The next three questions I'm going to ask you are really whether you can consider these factors.

Could you consider the Defendant's youth or relatively young age as a factor in mitigation in determining a sentence in this case?

JURY PANEL: (Indicating in the affirmative.)

MR. BAKER: The next one, could you consider the Defendant's loss of father and mother at a young age [148] as a factor in mitigation in determining a sentence in this case?

JURY PANEL: (Indicating in the affirmative.)

MR. BAKER: Could you also consider the Defendant's remorse, that he was sorry, as a factor in mitigation in determining a sentence in this case?

JURY PANEL: (Indicating in the affirmative.)

MR. BAKER: Have you or anyone you know personally ever been the victim of a violent crime?

MR. PAINTER: Are you talking about –

MR. BAKER: Violent crime, I'm talking something like robbery, assault, a crime of violence, murder. Is there anybody here who has or knows anybody or have a close friend?

JURY PANEL: (Indicating in the negative.)

MR. BAKER: Have any of you read any newspaper articles concerning this case?



JURY PANEL: (Indicating in the negative.)

MR. BAKER: Have any of you ever watched or listened to any broadcast news reports or radio reports concerning this case?

(Ms. Hayward, Ms. Willis and Mr. Painter indicated in the negative.)

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[155] THE COURT: If you were to sit as a juror in this case and the jury were to convict the Defendant of capital murder, would you be able to consider voting for a sentence less than death?

JURY PANEL: (Indicating in the affirmative.)

THE COURT: Do each of you understand that the Commonwealth must prove the Defendant's guilt beyond a reasonable doubt?

JURY PANEL: (Indicating in the affirmative.)

THE COURT: Do each of you understand that the Defendant is not required to produce any evidence?

JURY PANEL: (Indicating in the affirmative.)

THE COURT: Do you know of any reason whatsoever why you cannot give a fair and impartial trial to the Commonwealth and to the accused based solely on the evidence you will hear in this courtroom and the instructions of law which I will give you?

JURY PANEL: (Indicating in the negative.)

THE COURT: Ladies and gentlemen, this case will probably take more than one day; actually it will take

several days to be heard. With that understanding, do any of you know of any reason why you would not be able to sit as a juror in this matter?

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[159] were against it as a matter of principle?

MR. VANRIJN: Uh-huh.

MR. EBERT: And there came a point in time in your life when you –

MR. VANRIJN: Swayed the other way.

MR. EBERT: I'll ask you this question. The belief that you have now or had in the past, would that make it impossible for you to find the Defendant guilty of a capital offense?

MR. VANRIJN: No, sir.

MR. EBERT: Then I take it, it would not make it impossible for you to impose the death penalty if you felt that was appropriate.

MR. VANRIJN: Correct.

MR. EBERT: I take it from all of your answers nobody would automatically vote against imposing the death penalty.

MS. LYNCH: I would think long and hard about it before voting to impose it.

MR. EBERT: I think all of us would, but in any event, you would not automatically vote against is; [sic] is that correct?



MS. LYNCH: Right.

[160] MR. EBERT: Do any of you have any views that would substantially impair your ability to sit on this type of case?

JURY PANEL: (Indicating in the negative.)

MR. EBERT: All of you would be able to consider not only imposing the death penalty, but you would likewise be able to impose life if you felt that was appropriate and assuming the Defendant was found guilty; is that correct?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: Realizing that if he is found guilty, you'll have two options, either to impose the death penalty or not to impose the death penalty, in that event it would be life?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: The evidence in this case will be that the Defendant is black and that the deceased or the victim was Hispanic. Would the fact that the people are a different race have any bearing on your findings?

JURY PANEL: (Indicating in the negative.)

MR. EBERT: In other words, it would be the same if they were both the same race; is that correct?

JURY PANEL: (Indicating in the affirmative.)

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[162] ask individually of you. You're Mr. Boyer; is that correct?

MR. BOYER: That's correct.

MR. BAKER: You're Mr. Vanrijn?

MR. VANRIJN: Vanrijn.

MR. BAKER: Ms. Lynch; is that correct?

MS. LYNCH: (Nodding head.)

MR. BAKER: The first question is to all of you. Would each of you seek further instruction from the Judge if you did not fully understand the meaning of any of the instructions that the Judge gave you?

JURY PANEL: (Indicating in the affirmative.)

MR. BAKER: Would you disapprove of any member of your family marrying a person of a different race for that reason only? (Mr. Boyer and Mr. Vanrijn indicated in the negative.)

MS. LYNCH: I'm sorry. I didn't understand the question.

MR. BAKER: I'll repeat the question, ma'am. Would you disapprove of a member of your family marrying a person of a different race for that reason only?

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[168] MR. BAKER: If you were to convict the Defendant of the capital murder as charged, which has been read to you or you heard read this morning, would you automatically vote for the death penalty?

JURY PANEL: (Indicating in the negative.)



MR. BAKER: Do you believe young people generally act more impulsively than people as they are more mature?

MR. BOYER: No, sir.

MR. BAKER: Mr. Vanrijn?

MR. VANRIJN: I suppose to a certain degree.

MR. BAKER: Ms. Lynch?

MS. LYNCH: I would say yes.

MR. BAKER: The next three questions all deal with matters of mitigation. Mitigation is evidence, if you will, that relates to the sentencing and it is evidence which basically you can consider at sentencing. An example is if somebody commits an offense, but they've never done anything in their past, the fact they hadn't done anything –

MR. EBERT: Your Honor, that's not a question.

MR. BAKER: I'm just trying to define it. I ran into problems with this, they didn't understand it. [169] I'm just trying to define it before I ask the question.

MR. EBERT: Your Honor, he can ask the question, but to start talking about somebody who has never done anything in the past, I don't think that's a question –

THE COURT: Just ask the question. We'll proceed.

MR. BAKER: Well, mitigation relates to sentencing. It has nothing to do with the offense. So I'm

asking you these questions. Could you consider a Defendant's youth as factor in mitigation in determining a sentence in this matter?

MR. BOYER: I'm sorry. Define mitigation again.

MR. BAKER: Mitigation has nothing to do with guilt or innocence. It only has to do with the sentence that should be imposed, such as the past, things like that, things that would tend to make the person less deserving of severe punishment. That's basically what it means.

MR. BOYER: I imagine that could become a factor.

MR. BAKER: I'm just asking if you can [170] consider it.

MR. VANRIJN: I suppose so.

MS. LYNCH: Would you repeat the original question?

MR. BAKER: The original question, could you consider a Defendant's youth as a factor in mitigation in determining a sentence in this case?

MS. LYNCH: Yes.

MR. BAKER: In the same way, could you consider the Defendant's loss of a father and mother at an early age as a factor in mitigation in determining a sentence in this case?

MR. BOYER: It could become a factor.

MR. BAKER: That's all I'm asking.

MR. VANRIJN: It could be a factor.



MS. LYNCH: (Nodding head.)

MR. BAKER: Could you consider also the Defendant's remorse as a factor in mitigation in determining a sentence in this case? Remorse, that he was sorry. Could you consider that in determining a sentence in this case?

MR. BOYER: Yes.

MR. VANRIJN: I suppose.

[171] MR. BAKER: Ms. Lynch, I'll just ask if you can consider it.

MS. LYNCH: I could consider it.

MR. BAKER: Have you or anyone that you know personally ever been the victim of a serious crime, a serious crime meaning robbery, serious assault, something like that?

JURY PANEL: (Indicating in the negative.)

MR. BAKER: Have any of you read any newspaper articles about this case?

MR. BOYER: No, sir.

MR. VANRIJN: Yes.

MS. LYNCH: I have, but I don't remember the details.

MR. BAKER: Have you watched or listened to any radio broadcasts or television news reports in this case?

MR. BOYER: No, sir.

MR. BAKER: Mr. Vanrijn?

MR. VANRIJN: I think so. I think it was on the radio.

MR. BAKER: Ms. Lynch?

MS. LYNCH: I probably have, but –

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[177] even to consider its imposition in this case?

JURY PANEL: (Indicating in the negative.)

THE COURT: If you were to sit as a juror in this case and the jury were to convict the Defendant of capital murder, would you be able to also consider voting for a sentence less than death? That would be life in prison.

JURY PANEL: (Indicating in the affirmative.)

THE COURT: Do you understand that the Commonwealth must prove the Defendant's guilt beyond a reasonable doubt?

JURY PANEL: (Indicating in the affirmative.)

THE COURT: Do you further understand that the Defendant is not required to produce any evidence, the burden is on the Commonwealth?

JURY PANEL: (Indicating in the affirmative.)

THE COURT: Do any of you know for any reason whatsoever why you cannot give a fair and impartial trial to the Commonwealth and to the accused based solely on the evidence you will hear in this courtroom and the instructions of law which I will give you?



JURY PANEL: (Indicating in the negative.)

THE COURT: Ladies and gentleman, this case

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[179] Defendant asks questions and then we'll reaffirm what they have just answered.

(The jury panel was sworn by the Clerk.)

THE COURT: Ladies and gentlemen, before the Commonwealth proceeds, the answers that you have given then, you have just sworn to, that they were truthful answers to the questions that the Court has asked; is that correct?

JURY PANEL: (Indicating in the affirmative.)

THE COURT: All right. Mr. Ebert?

MR. EBERT: I think all of you understand the case before you permits the imposition of the death penalty; do you not?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: Likewise, I'll tell you, we have in this case what we call a bifurcated proceeding. That means that you will hear evidence concerning the Defendant's guilt or innocence. If you determine the Defendant to be guilty beyond a reasonable doubt, then you will hear further evidence to determine what should be the appropriate punishment; do you understand that?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: And I think, from what you've said [180] earlier, all of you could impose the death penalty

and could consider imposing it if the facts and circumstances would all justify the same; is that correct?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: And it would be fair to say that you could likewise consider something less than the death penalty; that is, imposing life if the facts and circumstances would all justify it; is that correct?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: Would all of you be willing to consider all of the evidence that comes before you at the, shall we say, guilt or innocence stage and at the penalty stage, if we reach that point?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: You've all said that you understand that the burden is upon the Commonwealth to prove the Defendant guilty beyond a reasonable doubt. Does anyone feel that the Commonwealth should have to go beyond that burden simply because this carries a death penalty? Do you follow what I mean?

In other words, the same burden would apply in this case as it would in any other criminal case.

JURY PANEL: (No response.)

[181] MR. EBERT: Would any of you require more than

JURY PANEL: (Indicating in the negative.)

MR. EBERT: And you could follow the Court's instructions in that regard; is that correct?



JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: Do any of you have any moral and ethical or religious scruples or personal beliefs against the death penalty?

JURY PANEL: (Indicating in the negative.)

MR. EBERT: I take it from what you've said earlier nobody would automatically vote against the death penalty; is that correct?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: Do any of you have any regard, irrespective of any beliefs, irrespective of your beliefs concerning the death penalty, that would impair your ability to be fair and impartial in this matter?

In other words, would you have any personal belief in such a case that would make you reluctant or impair your ability to follow the Court's instructions?

JURY PANEL: (Indicating in the negative.)

MR. EBERT: The evidence in this case will be

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[182] MR. BAKER: Thank you, Your Honor. Ladies and gentlemen, like Mr. Ebert, I'd like to thank you on behalf of myself and my associate, Mr. Morissette, for taking your valuable time to come here on this very important matter. Again, my questions aren't intended to embarrass you in any way, but they are something we have to ask to determine whether we can get an appropriate jury in this case. I will ask you questions directed at each of you and I also will ask questions with respect to

individuals. The first question I have for the entire panel is would each of you seek further instructions from the Judge if you did not fully understand the meaning of any of the instructions that he gave you in this case?

JURY PANEL: (Indicating in the affirmative.)

MR. BAKER: Is the answer yes?

JURY PANEL: (Indicating in the affirmative.)

MR. BAKER: Next question is would you disapprove of a member of your family marrying a person of a different race for that reason only?

MS. CHAPPELL: Would you repeat that?

MR. BAKER: I sure will. Would you disapprove

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[188] MR. BAKER: Mr. Pama?

MR. PAMA: No.

MS. BARRETT: Not me personally.

MR. BAKER: Do any of you personally hunt or shoot for recreation?

JURY PANEL: (Indicating in the negative.)

MR. BAKER: I know you said your sons did, but none of you have personally?

JURY PANEL: (Indicating in the negative.)

MR. BAKER: Next question is to all of you. Do you believe a person can commit an act in fear and panic which is out of character for them?



JURY PANEL: (Indicating in the affirmative.)

MR. BAKER: I think Mr. Ebert touched it, but none of you have any religious convictions, either strongly disapprove or pro death penalty; is that correct?

JURY PANEL: (Indicating in the affirmative.)

MR. BAKER: If you were to convict the Defendant of capital murder, as he is charged in this case, would you automatically vote for the death penalty?

MS. CHAPPELL: Would you repeat that?

MR. BAKER: I'll repeat it. If you were to convict the Defendant of capital murder, as he is charged [189] in this case, and you heard the charge read, would you automatically vote for the death penalty?

(Ms. Chappell, Mr. Scott and Mr. Pama indicated in the negative.)

MS. BARRETT: I thought that was decided by the Judge.

MR. BAKER: No, ma'am. Would you, as a juror?

MS. BARRETT: Do we get choices?

MR. BAKER: As Mr. Ebert explained, it's a bifurcated trial if we get to that, and his questions touched on that bifurcated two stage trial. One part is on the finding with respect to guilt or innocence, the second part is on the sentencing, and that's the part I'm referring to. I'll repeat the question. If you were to convict the Defendant of capital murder, as he's charged with, would you automatically vote for the death penalty?

MS. BARRETT: No.

MR. BAKER: Do you believe that young people generally act more impulsively than people with more maturity or older people? Do you all agree with that?

JURY PANEL: (Indicating in the affirmative.)

MR. BAKER: The next question deals with [190] mitigation. The term mitigation has nothing to do with guilt or innocence. It relates to the sentencing and it's something you should consider on the sentencing only, and these three questions deal with the term mitigation.

Could you consider a Defendant's youth as a factor in mitigation in determining a sentence in this matter? I'll rephrase it for you, ma'am, or I'll repeat it for you.

I explained what mitigation was. It doesn't have anything to do with guilt or innocence, only with the sentencing. I'm asking you could you consider a Defendant's youth or the fact that he's young as a factor in mitigation in determining a sentence in this matter?

MS. CHAPPELL: (Nodding head.)

MR. BAKER: Mr. Scott?

MR. SCOTT: No.

MR. PAMA: (Nodding head.)

MS. BARRETT: (Shaking head.)

MR. BAKER: Again, I'm just asking if you could consider these things, nothing else. Could you consider the Defendant's loss of a father and mother at an early age as a factor in mitigation in determining a sentence in this matter?



[191] MS. CHAPPELL: (Shaking head.)

MR. SCOTT: (Shaking head.)

MR. BAKER: Do you want me to repeat the question, Ms. Chappell?

MS. CHAPPELL: (Shaking head.)

MR. BAKER: Mr. Scott?

MR. SCOTT: No.

MR. BAKER: Mr. Pama?

MR. PAMA: (Shaking head.)

MS. BARRETT: (Shaking head.)

MR. BAKER: An, [sic] Ms. Barrett, I take it your answer is no; is that correct?

MS. BARRETT: That's correct.

MR. BAKER: The last one is could you consider the Defendant's remorse, being sorry, as a factor in mitigation in determining a sentence in this matter? I'm asking if you could consider it.

MS. CHAPPELL: (Shaking head.)

MR. SCOTT: (Nodding head.)

MR. PAMA: (Nodding head.)

MS. BARRETT: Possibly.

MS. CHAPPELL: His remorse, no, I don't think so.

[192] MR. BAKER: I'm just asking could you possibly consider it. You said you could.

MS. BARRETT: Well, maybe possibly.

MR. BAKER: Have you or anyone you know personally ever been the victim of a violent crime, murder, robbery?

Ms. Chappell?

MS. CHAPPELL: (Shaking head.)

MR. BAKER: Mr. Scott?

MR. SCOTT: (Shaking head.)

MR. BAKER: Mr. Pama?

MR. PAMA: About three years ago I had – my wife's first cousin, who was very close to us, got killed. He was a police officer, from a drug shootout, and that affects me.

MR. BAKER: Having said that, do you think since this case involves a police officer as a victim, do you think your personal experience would affect your deliberations in this case?

MR. PAMA: It could.

MR. BAKER: It could?

MR. PAMA: He was real close.

MR. BAKER: Do you think that you could put it

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[205] THE COURT: Is there any juror who could never vote to impose the death penalty or who would refuse even to consider its imposition in this case?



JURY PANEL: (Indicating in the negative.)

THE COURT: If you were to sit as a juror in this case and the jury were to convict the Defendant of capital murder, would you be able to consider voting for a sentence less than death?

MR. LANCASTER: Would you say that again, please?

THE COURT: All right, sir. If you were to sit as a juror in this case and the jury were to convict the Defendant of capital murder, that is the charge of which he was arraigned on, would you be able to consider voting for a sentence less than death; in other words, life imprisonment?

JURY PANEL: (Indicating in the affirmative.)

THE COURT: Do both of you understand that the Commonwealth must prove the Defendant's guilt's beyond a reasonable doubt?

JURY PANEL: (Indicating in the affirmative.)

THE COURT: Do you further understand that the Defendant is not required to produce any evidence, the

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[207] hopefully –

MR. LANCASTER: That would not be a problem for me. If it got into next week, it possibly could be.

THE COURT: It may go into Monday, just assume it might. I can't say that it will for sure, but it may go into the first part of next week.

MR. LANCASTER: The first part of the week would not be a problem.

THE COURT: Mr. Ebert?

MR. EBERT: Gentlemen, as the Court has told you I'm Paul Ebert. Mr. Willett and myself are here on behalf of the Commonwealth and we want to thank you for serving as jurors. I know you realize this is a very important case and I hope you realize the questions we ask are not intended to embarrass you or make you uncomfortable in any way.

I think you've already answered most of these, but you do understand in a capital offense such as this that a potential penalty is the death penalty, do you not?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: We have what we call a bifurcated proceeding in this type of case. That means that you will hear evidence as to the guilt or innocence of the [208] accused. If you find the Defendant guilty beyond a reasonable doubt, then you will hear evidence as to the appropriate punishment. Could you consider all of the evidence that you heard and apply it at the proper time according to the Court's instructions?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: I think you said that you understood that the burden is upon the Commonwealth to prove the Defendant guilty beyond a reasonable doubt. Do you understand that burden is the same in all criminal cases, including this one?

JURY PANEL: (Indicating in the affirmative.)



MR. EBERT: The fact that this is a potential death penalty case, would you require any more than that burden On the Commonwealth?

JURY PANEL: (Indicating in the negative.)

MR. EBERT: Do you have any moral or ethical or religious or personal beliefs against capital punishment?

JURY PANEL: (Indicating in the negative.)

MR. EBERT: I think you both indicated that you could consider imposing the death penalty in the [209] appropriate case based on the evidence and the law and you could likewise consider imposing something less, that being life imprisonment, assuming the Defendant was convicted; is that correct?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: Regardless of what your views are for or against the death penalty, do you have any beliefs that might impair your ability to sit in judgment of this type of case?

JURY PANEL: (Indicating in the negative.)

MR. EBERT: The evidence in this case will indicate that the Defendant is black and that the victim is Hispanic. Would the fact that the people are of different races have any effect upon your ability to be fair and impartial?

JURY PANEL: (Indicating in the negative.)

MR. EBERT: You would consider it the same if they were both of the same race; is that correct?

JURY PANEL: (Indicating in the affirmative.)

MR. EBERT: Have either of you been employed by a law firm that practices criminal law?

JURY PANEL: (Indicating in the negative.)

MR. EBERT: Have either of you had a family [210] member or a close personal friend that has been prosecuted for a criminal offense, and if so, do you feel that person received a fair trial?

MR. COUTINHO: No.

MR. LANCASTER: No one ever prosecuted.

MR. EBERT: They're both acceptable to the Commonwealth, Your Honor.

THE COURT: Thank you, Mr. Ebert.

Mr. Baker?

MR. BAKER: My name is William Baker. On behalf of my associate, Mr. Morissette, and myself, I'd also like to thank you for coming here today and paying attention to this very serious case. I have some questions, which like Mr. Ebert's, are not to embarrass you in any way, but which will aid us in determining the jury to sit in this case and are very important in the jury determination. My first question will be addressed to both of you unless I address it individually. Would you seek further instruction from the Judge in this case if you did not fully understand the meaning of any of the instructions that he gave you?

JURY PANEL: - (Indicating in the affirmative.)

* * *



[214] MR. BAKER: What was your occupation?

MR. LANCASTER: Administrative specialist.

MR. BAKER: Adjutant General's field? What field was that in?

MR. LANCASTER: Basically AG, yes.

MR. BAKER: Neither of you have any religious convictions which either strongly support or strongly disapprove of the death penalty; is that correct?

JURY PANEL: (Indicating in the negative.)

MR. BAKER: If you were to convict the Defendant of capital murder, as charged, you listened to the charge earlier this morning, would you automatically vote for the death penalty?

MR. COUTINHO: No.

MR. LANCASTER: I'd have to hear the Judge's instructions first off, but the death penalty based on a conviction of murder by itself, no.

MR. BAKER: Do you believe that young people generally act more impulsive than the people with more maturity or older people?

MR. LANCASTER: I believe so.

MR. COUTINHO: It depends.

MR. BAKER: The next three questions deal with [215] mitigation. Mitigation is a term that has nothing to do with guilt or innocence, only as to sentencing. I'm asking you, in sentencing could you consider a Defendant's youth as a factor in mitigation in determining a sentence in this matter?

MR. COUTINHO: I don't understand the question.

MR. BAKER: Mitigation is a term which means some reason that they should receive a lighter or a less severe sentence. That's what the term means, good character or something of that nature, which could be considered to give them in awarding a person a lesser sentence. Do you understand the term?

My question to you is could you consider the Defendant's youth as a factor in mitigation in determining a sentence in this case?

MR. COUTINHO: Yes.

MR. LANCASTER: I think it would have to be weighed with the evidence.

MR. BAKER: I understand. You could consider it with all the other evidence?

MR. LANCASTER: Yes.

MR. BAKER: Could you consider the Defendant's [216] loss of a father and mother at a young age also as a factor in mitigation in determining a sentence in this matter?

MR. COUTINHO: Yes.

MR. LANCASTER: I think so.

MR. BAKER: Could you consider the Defendant's remorse as a factor in mitigation in determining a sentence in this case? Do you understand what I mean by remorse?



MR. COUTINHO: No.

MR. BAKER: You don't understand the term or you couldn't consider it?

MR. COUTINHO: Yeah, I could consider it.

MR. BAKER: Have you or anyone you know personally ever been the victim of a violent crime?

MR. COUTINHO: No.

MR. BAKER: Mr. Lancaster?

MR. LANCASTER: Not that I can recall.

MR. BAKER: Mr. Lancaster, have you read any newspaper articles concerning this case?

MR. LANCASTER: Me?

MR. BAKER: Yes, sir.

MR. LANCASTER: No, I have not.

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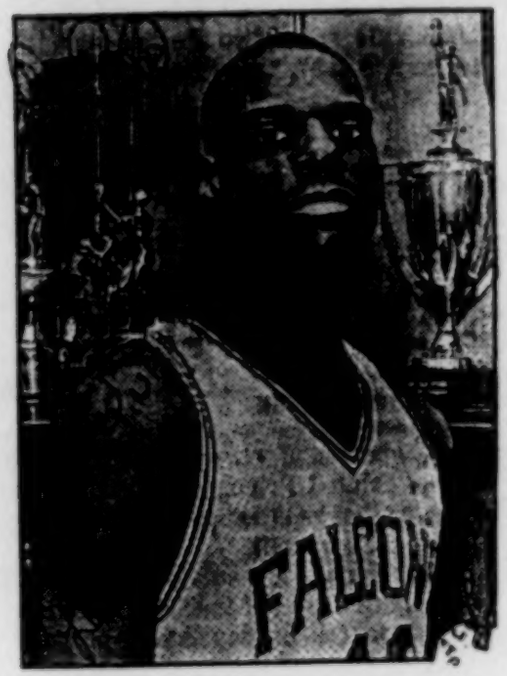
PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]



**LONNIE WEEKS**
**Seventy-First Leader**

Athlete Of The Week

**Weeks Answers Coach's Call**

By Earl Vaughan
*Staff Writer*

When he was evaluating his returning talent a few weeks ago, Seventy-First High School boys' basketball Pete House made no secret of the fact Lonnie Weeks was going to have to play a pivotal role if the Falcons were to do well.



Just two games into the season, Weeks has more than lived up to his coach's expectations.

Seventy-First opened the season last week with victories over Richmond Senior and Scotland. Weeks scored a total of 58 points, grabbed 29 rebounds and shot 64 percent from the field in the two games.

His performance earned him this week's Fayetteville Observer-Times Athlete of the Week honors.

"I just hope we haven't jinxed ourselves" House said. "As young as we are, we've got to have so many guys play well. But Lonnie had an excellent week. He's such a fierce competitor."

House felt attitude had a lot to do with Weeks' fast start. "He played like a senior, played with leadership qualities," House said. "We've been trying to prime him to be a leader for us this year and to be our captain.

"I thought he did that better than anything. The other strong point for the week was the other kids did a good job of getting him the basketball."

Weeks, 6-foot-3, is playing the low post for the Falcons this year, so most of his shots come inside. But even though he was shooting from close range, he admitted concern about his accuracy last week.

"I knew that my shot wasn't really on," he said. "I tried to do the best I could and it started falling.

"People are expecting me to do a lot, and I'm trying to do the best I can, I don't feel too much pressure, because I just go out there and do what I have to do, I

think I can keep it up as long as I get support from everybody."

**Nominations for Athlete of the Week must be received no later than Sunday evening immediately following the nominated performance(s). Telephone 323-4848 or 1-800-682-3476.**

Staff Photo By CINDY BURNHAM

*Seventy-First's Lonnie Weeks Grabs Rebound Against Tigers*

# *RALLY*

## Seventy-First Leads Mid-South After 82-80 Overtime Victory

*RALLY*

**Seventy-First Leads Mid-South**
**After 82-80 Overtime Victory**

*Prep Roundup, Pages 2-C, 3-C*
**By EARL VAUGHAN**
Staff Sports Writer

HOPE MILLS – South View High School boys' basketball coach Ro[ ] Miller called it "the hardest loss I've ever had in my life."

Miller and his Tigers watched visiting Seventy-First come back from a 15-point halftime deficit and rally for an 82-80 overtime victory over South View.

The triumph was Seventy-First's second in three tries against South View this year and its seventh consecutive victory overall.

The Falcons are in sole possession of first place in the Mid-South 4-A Conference, 7-1 in the league, 16-1 overall. South View, which suffered its second straight loss, is 6-2 in [Line missing in copy.] 53-34 win over South View behind Cheryl McNair's 20 points.

The Falcons are 17-0 overall, 8-0 in the league.

South View, 3-5 in the conference and 3-12 for the season, was led by Katrina Heath with 11 points.

Levell Lewis was the hero for Seventy-First's boys as he scored 26 points, 10 of them in the final period as the Falcons wiped out a 12-point South View lead with 6:10 left in regulation to force the overtime.

Gerriod Griffin had a chance to give South View a three-point lead with 20 seconds showing, but only hit one of two free throws to put the Tigers on top 75-73.

Lewis was fouled with seven seconds on the clock and went to the line for a one-and-one.

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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Luther J. Waddell – Direct

[84] THE COURT: Mr. Morissette?

MR. MORISSETTE: Nothing.

THE COURT: Thank you, Mr. Daniels, you are excused, you may go, sir.

(Witness excused.)

THE COURT: Next witness?

MR. EBERT: Luther Waddell.

Whereupon

LUTHER WADDELL

a witness, was called for examination by counsel on behalf of the Commonwealth, and, after having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EBERT:

Q State your full name, sir, and give your address.

A Luther James Waddell, 3446 Chesterbrook Drive, Fayetteville, North Carolina.

Q Now, Mr. Waddell, are you presently incarcerated?

A Yes.

Q And where are you incarcerated?

* * *

[86] Q And which of you graduated first?

A I did.

Q Now, did there come a point in time – you were previously incarcerated prior to this time; is that right?

A Yes.

Q And when did you get out on that incarceration?

A I was incarcerated twice before this, which one is you talking about?

Q When is the last time?

A Last April, April of '92.

Q And soon thereafter did you become an associate of Mr. Weeks?

A Yes.

Q And how often would you see him?

A Every day.

Q In what capacity would you see him?

A Say what?

Q Did you go by his home, what have you?

A Yeah.

Q Did there come a point in time when you and he had occasion to enter the home of one, Gene Farmer?



A Yes.

Q And how did you come – did you know whether or [87] not Mr. Farmer was going to be away from home?

A Yeah, I knew.

Q And how did you know that?

A This dude who stayed down the street told me, live in my neighborhood.

Q Would that have been Mr. Jay Leach?

A Yeah.

Q As a result of that did you have a conversation with the Defendant?

A Yes.

Q And what did you talk about?

A Talking about Terrell was going to be away from his house, he was locked up, and it would be easy to go up in his house and get his stuff.

Q And did you and the Defendant go to his home?

A Yes.

Q How were you traveling?

A I drove.

Q What kind of vehicle?

A A red truck.

Q Whose truck was that?

A It was my girlfriend's truck.

Q And what did you do upon entering the home?

[88] A Looked around first, and then we just put some stuff in some boxes and took it out.

Q What did you take from that home?

A TVs, stereo equipment, speakers, and his car, that's it.

Q Had the home already been entered prior to your getting there?

A Yes.

Q And these items were still there?

A Yes.

Q And did there come a point in time when you saw the Defendant with anything in his hands? In other words, was there one point in time when you were upstairs?

A Yes.

Q And what happened?

A What do you mean what happened?

Q Did he come upstairs? Did he tell you what he found?

A Yeah, I was upstairs. He came upstairs and told me he had the car keys.

Q And did you see them?

A Yes.

Q What did he have in his hand at that time?



[89] A He had a purple bag with car keys in it.

Q A purple bag? Did you ask him where he found it?

A Yes.

Q What did he say?

A In the cabinet in the kitchen.

Q What's that?

A In the cabinet in the kitchen.

Q In the cabinet in the kitchen?

A (Nodding head.)

Q And what was the attitude when he came upstairs?

A He was happy.

Q Happy?

A Yeah.

Q And do you know why he was happy?

A I guess because he found the car keys.

Q And did he, in fact, take the car?

A Yes.

Q Well, I guess both of you drove it.

A Yeah.

Q Who drove it away from the scene?

A Lonnie drove it away from the scene.

Q What did you do with the property that you had

* * *

[98] the gun?

A Yeah.

Q And why is it that you wanted it?

A Because we had a beef with this other drug dealer.

Q Was his name Dutloe?

A Yes.

Q And what caused that beef?

A It started because he didn't want us selling drugs where we were selling them at, in the neighborhood we were selling them in.

Q What happened as a result of that?

A What you mean?

Q What did Mr. Dutloe do to Mr. Weeks?

A He hit him in the head with a gun.

Q He hit Mr. Weeks in the head with a gun?

A (Nodding head.)

Q Was that a 25 caliber gun?

A Yeah.

Q As a result of that did you and Mr. Weeks have a discussion as to what you were going to do to Mr. Dutloe?



A Yeah.

Q And what was that?

* * *

[109] Luther J. Waddell – Recross

BY MR. EBERT:

Q What type of drugs did you sell, sir?

A Cocaine.

Q What type of Cocaine?

A Crack.

Q Do you use drugs?

A Marijuana.

Q To your knowledge does the Defendant use drugs other than Marijuana?

A No, sir.

Q Does not?

A Unh-unh.

Q So, you sell Crack Cocaine for profit; is that right?

A Uh-huh.

MR. EBERT: That's all I have.

MR. BAKER: Your Honor, I have one question, only.

THE COURT: All right, sir.

RECROSS EXAMINATION

BY MR. BAKER:

Q You state you hadn't talked to Mr. Ebert before last night, that's correct?

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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[199] jury returns.

(Brief recess.)

THE COURT: Counsel, I have received two questions from the jury. The first question reads as follows: During Special Agent Roland's first he read Mr. Weeks his rights and asked him did he understand these rights. He did by remaining silent. At the second interview he asked if he remembered and understood his rights. He said yes.

Question: During any one of these interviews did anyone ask Mr. Weeks if he wanted an attorney present on his behalf? Then, a line and another question. If not, would this confession be admissible in court?

Second question: What law states that it is legal to coerce A, this says suspense with the intent – I'm sure they meant a suspect, with the intent to get a confession, parenthesis, (lie about a fact of evidence), parenthesis close.

I have responded as follows to both questions with a single answer. The evidence before you for your consideration has been admitted by this Court. It is your duty to weigh all the evidence in arriving at your verdict.

Does either counsel wish to add to that?

[200] Mr. Baker?

MR. BAKER: No, sir, that's the law.

THE COURT: Mr. Ebert?

MR. MORISSETTE: Your Honor, I think it might be appropriate to – I believe there's a standard instruction on the weight to be attached to the Defendant's confession. Obviously, I was unprepared for this question, Your Honor, I can't remember it off the top of my head. But I know there's a specific instruction that tells the jury that they may weigh the circumstances and the confession in determining the weight to be given to the confession. And I would ask you to respond with that instruction.

THE COURT: Commonwealth?

MR. EBERT: I don't think it's necessary. Would the Court repeat again what you intend to tell them?

THE COURT: The evidence before you for your consideration has been admitted by this Court. It is your duty to weigh all the evidence in arriving at your verdict. And that's predicated on the question that says would this confession be admissible in court. We're already in court and we've already gotten to that point, objections noted and so forth, and we've proceeded accordingly. So, we're not going to go back and retry it.

[201] MR. EBERT: I wonder if the Court would prefer to say, you're not to concern yourself with whether or not such matters are admissible, they're properly before you at this time. Something like that.

THE COURT: Does the Defendant wish to be heard on that additional?

MR. MORISSETTE: Perhaps you should give both, Your Honor. Again, I think they're inquiring – they



have some concerns about the confession and the weight to be given to it.

MR. EBERT: I'd say in addition to what you've said, Your Honor.

MR. BAKER: I thought his original instruction is exactly what the law is.

THE COURT: Does either counsel wish to be heard?

MR. MORISSETTE: I submit it to the Court.

THE COURT: You submit it to the Court.

Mr. Ebert?

MR. EBERT: I'd like for you to add, I think it might be more clarifying, that you're not to concern yourself with whether or not such evidence is admissible and it's properly before you.

[202] THE COURT: All right, sir, I'll add that phrase to the response. The court will be in recess, then, until the jury returns.

(Brief recess.)

THE COURT: Gentlemen, I've received another question from the jury. The question is: Was Officer Cavazos right or left handed? I've responded that they must proceed on the evidence that has been presented before them. Both counsel concur?

MR. BAKER: Concur.

MR. EBERT: (Nodding head.)

THE COURT: All right, sir, I'll have the bailiff to return this question and answer. I see it's almost 5:30. I'm going to have him bring the jury forward and we'll be taking an evening recess at this time in this particular matter. The Court will be in recess for just a few minutes while he goes down and returns the question and answer back to the jury and gets them ready to come forward. So, we'll take a very brief recess.

(Brief recess.)

THE COURT: All right.

(Whereupon, the jury entered the courtroom and resumed their seats in the jury box.)

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

We, the jury, find the defendant, LONNIE WEEKS, JR., GUILTY of CAPITAL MURDER, as charged in the Indictment.

/s/ David L. Dobyns
FOREPERSON

/s/ David L. Dobyns
PRINT FOREPERSON'S NAME

Commonwealth of Virginia

vs. Criminal Number 33170

Lonnie Weeks, Jr.

October 21, 1993

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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[10] this, one of the most difficult of all cases. It's the eighth time I've had the duty to stand before the citizens of this community and ask that the life of another individual be taken.

I take no pleasure in that and it's not easy, and I know it's an awful burden for you folks. But, I've taken an oath, as you have taken, and you are to consider certain ev lence now, as well as the evidence that you've heard, and determine what is the appropriate sentence for the crime of – that you have convicted the Defendant.

You look at the Defendant. He's a young man. The evid nce revealed to you that he had a lot of opportunities that many people his age and stature do not have. But, nevertheless, I will submit to you that the evidence will show that his looks are deceptive.

The evidence will show to you that what he did was vile, horrible and inhuman. You've reached that conclusion to some degree, I'd submit. The evidence will show to you – and the evidence you've heard will show to you – that he's dangerous.

Now, at this point in time, you will hear evidence concerning some of the background and you will hear evidence concerning the impact that Jose Cavazos'

* * *

[13] conditions.



However, what the jury must now do is decide the two alternatives that are open to them. That is, one, death; and the other, life in prison.

We will introduce evidence to show that this Defendant basically lead a good life for approximately eighteen years. He lived in a terrible neighborhood infested by drugs. Violence was rampant and yet he stayed out of trouble.

We'll show also that this individual was a regular churchgoer for eighteen years. I guess if there's anything to be learned outside this case, would be that going to church is good for one because, as Lonnie Weeks went to church, he never got in trouble. He never got in trouble.

As Mr. Ebert alluded to, this was an individual with some promise. This was an individual who was a star basketball player, an individual that probably could have been scholarship material to an ACC team and maybe have played in the NBA. Coach House will testify that he probably – his coach at Fayetteville 71st High School – will testify he was one of the finest basketball players he ever had, and he tried.

[14] We'll also introduce evidence from his friends that Lonnie never, with the one exception, was a violent person. He didn't get in fights.

I believe Coach House will testify he never got ejected from a game. He never can remember him even getting a technical foul. For those of you who know something about basketball, a fierce competitor can get a technical foul rather easily because tempers do rise. But, that's not Lonnie Weeks' background.

So, you as the jury will have to consider this. Now, we won't submit to you that Lonnie Weeks did not go bad after he finished high school and after he quit going to church, because he certainly did things.

Mr. Ebert alluded to you he has a conviction for selling drugs. Yes, he does. He has one conviction on his record involving sale of marijuana, which he was sentenced to, I believe, three years in prison, suspended. That is the only conviction he has.

He has no juvenile record, and I'll submit to you, ladies and gentlemen of the jury, when you hear evidence of the neighborhood he came from and the type of – shall we say – community it was, he was the exception. That's what makes this all the more remarkable.

[15] Now, the problem – Lonnie did not get to go to college because of his grades. Even though he became academic ineligible his senior year, he still was recruited by a junior college, Mount Olive, and he was preparing to go there.

You'll also hear evidence that Lonnie has two children by two different women, but also that he cares about these children and he tried to support them. He wasn't able to get good jobs, so he sort of took the easy path.

Now, this is an individual that you will see the human side of him. What he did, obviously, cannot be forgiven. However, the question will be, should he pay the ultimate price for this, or is there enough goodness in this individual that this jury could find mercy in its heart to spare his life.



Ladies and gentlemen of the jury, that is the part of the trial that we now proceed with.

Thank you.

THE COURT: Mr. Ebert?

EVIDENCE ON BEHALF OF THE COMMONWEALTH

MR. EBERT: Sergeant Casey.

THE COURT: Sergeant Casey?

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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M. W. Casey – Direct

[19] Q Was this substance packaged?

A It was packaged, yes, sir, it was. It was approximately twenty-five small bags packaged for sale and delivery on the local street level, in what we call dime bags.

Q Did you likewise find any money at the time of your search?

A Yes, sir, we found three hundred and ninety-two dollars in U.S. currency.

Q Where did you find that, sir?

A In the front bedroom of the trailer.

Q How many people were in the residence when you searched it?

A A total of five, sir.

Q What were the names of the other individuals?

A A Jerry William McNeal, an Angela Louise Williams and a Reginald Dwayne Townsend.

Q Did you place all these individuals under arrest?

A Yes, sir, we did.

Q Same charge?

A For the same charge, yes, sir.



Q Were all these individuals convicted in regard [20] to this search and your arrest?

A Yes, sir.

Q Now, of the individuals that were occupied and were arrested in connection with this conspiracy, did the others have criminal records?

A Yes, sir, they did.

Q Would you tell the ladies and gentlemen of the jury what records –

MR. BAKER: Objection, Your Honor, I believe that's totally irrelevant to this Defendant's case.

THE COURT: Mr. Ebert?

MR. EBERT: If it please the Court, I think the record and the type of person he's associating with, he's dealing with, has bearing on this particular case to show the background and the environment in which this man was operating his business.

MR. BAKER: Again, I object, Your Honor. The record of his co-defendants is totally – of the co-defendants in that case is totally irrelevant to these proceedings.

THE COURT: I'll allow the question. Go ahead, Mr. Ebert.

MR. BAKER: Objection noted, please, on the [21] grounds of the Fifth, Sixth, Eighth, Fourteenth Amendments to the Constitution of the United States.

BY MR. EBERT:

Q Would you repeat for the – or tell the ladies and gentlemen of the jury the record of the persons involved?

A Okay, Ms. Monique Townsend's been charged with larceny, possession of drug paraphernalia, possession of a stolen vehicle, assault on a law enforcement officer. Ms. Williams has been charged with possession with intent to sell and deliver marijuana, conspiracy to possess with intent to sell and deliver marijuana. Another charge on Ms. Townsend is a possession with intent to sell and deliver marijuana.

Reginald Dwayne Townsend has possession of a stolen vehicle, possession of stolen goods, breaking and entering and larceny, second degree burglary, breaking and entering, felony larceny.

Mr. McNeal was charged with forgery and uttering, four counts, trespassing, possession of stolen vehicle, possession with intent to sell and deliver marijuana and maintaining a place for marijuana.

Q Now, was the Defendant eventually convicted of



[22] the charge that you placed?

A Yes, sir, he was.

Q You know the disposition of the matter at the time of sentencing?

A Yes, sir, I do.

Q What was that, sir?



A He plead guilty to a ten-year felony, was convicted and was given three years suspended, for five years supervised probation.

Q Do you know what the street value of the marijuana that you found at the time of your search was?

A The street value would be approximately around seven hundred fifty, eight hundred dollars.

Q Did you – you found no cocaine? Is that correct?

A No, sir, no cocaine.

MR. EBERT: That's all I have of this witness.

THE COURT: Mr. Baker?

MR. BAKER: A couple.

CROSS EXAMINATION

BY MR. BAKER:

Q Detective, you're with Fayetteville Police Department, Narcotics Division?

* * *

[24] A A tremendous amount of shootings, yes, sir.

Q Now, sir, you've alluded to the record the five other people charged in this – excuse me, four other people.

There were four people – five people charged including the Defendant? Is that correct?

A Yes, sir.

Q You've alluded to the records of the four people. What was Mr. Weeks' record?

MR. EBERT: Your Honor, we'll stipulate he had no record prior to this time.

MR. BAKER: I've got no further questions.

THE COURT: May we excuse this witness, counsel?

MR. EBERT: Yes, sir.

MR. BAKER: Yes, sir.

MR. EBERT: Your Honor, I did not do this, but I would move to adopt the evidence which the jury previously heard in the guilt phase to be utilized in the sentencing stage, pursuant to law.

MR. BAKER: I cannot object.

THE COURT: All right, sir. That will be adopted, as well, then, sir.

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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Ralph Marshall – Direct

[40] jury a bit about his background and how he came to be a State Policeman?

A When I first met Jose, he was what we term a weight enforcement officer. These are the officers who work at the scales and enforce the weight laws and the laws governing the truck traffic.

He then transferred over to the position of Trooper, and I knew him as what we call a WEO, a weight enforcement officer, and also knew him because his children and my children attended the same school, so we were – I met him not only in a professional basis, but also in a personal, off-the-job basis.

Q Now, he was a bit old to be, shall we say, a rookie trooper, was he not?

A Yes, sir, he was older and about my age, and was affectionately referred to as "Papa." I [sic] lot of the troopers refer to me as "Dad." It's just a respect that they pay, I guess, to us older members of the Department.

Q Do you know how he was regarded among his fellow troopers?

A Very highly regarded and revered.

Q Could you describe a bit about his personality and the means, if you know, of how he would enforce the

* * *

[42] members of the State Police who had been involved in this investigation to gather at the McCord Center. There were two people who identified themselves as psychologists at the meeting, who had been trained in counseling individuals who had been involved in traumatic experiences.

The meeting was well attended. There were approximately twenty-five people who attended this session. At the session, the mode or the mood was set by all of us agreeing that we would talk openly; that we could openly express our feelings and that we would not go out and individually name someone who reacted in what many police officers felt was less than a manly manner.

I think police officers, more than other professions, try to put up a very straight front, big-boys-don't-cry kind of attitude, and they hide your [sic] feelings, over the thirty years that I have worked and have known and dealt with the troopers. They all want to give the appearance of being beyond grief or beyond sorrow.

This was the first time that we had held such a session and I had never had the opportunity to attend one. But, I have never seen the outpouring of grief, [43] sorrow and hurt that I saw at this meeting. I had tears in my eyes, and I don't think there was – it was a very moving experience. I'll tell you, I –

Q From your observation, have you continued to see an effect of Trooper's Cavazos' death on the members of the Virginia State Police?

A Yes, sir, I have.



MR. EBERT: That's all I have.

THE COURT: Mr. Baker?

MR. BAKER: No cross.

THE COURT: Can we excuse this witness, counsel?

MR. WILLETT: Yes, sir.

THE COURT: Mr. Marshall, thank you for your time and testimony. You're excused and you may go, sir.

(Witness excused.)

THE COURT: Your next witness?

MR. WILLETT: Jeanette Galbraith, please?

THE COURT: Jeanette Galbraith, please. Whereupon

JEANETTE GALBRAITH

a witness, was called for examination by counsel on behalf of the Commonwealth, and, after having been duly sworn,

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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Jeanette A. Galbraith – Direct

[46] considered Jose and his family very close friends of mine. I've been to his house numerous times, spoken to Jose about unrelated work, just about his family life, everyday life.

He was concerned about all the members that he worked with. He shared everything with us. It was more of a personal, as well as a work relationship.

Q Ms. Galbraith, tell the jury, please, under what circumstances you came to learn of his death.

A Approximately an hour and fifteen minutes before the incident, I had left Jose at the area office. On this particular evening, his shift followed mine. We had a brief conversation at the office, ending with the words, "Be careful; have a safe shift." I departed.

Q You said that to him?

A I said that to him. It's a habit I have to my co-workers.

I went home. Typically, after a shift, I don't go immediately to bed. I – it takes me time to wind down and relax.

I was watching TV, a late show, when the dispatcher called the house. I also live with another trooper, and she made sure that both of us were on the [47] phone and she gave us the words, "Jose's been shot."



Q What was your initial reaction to that?

A Panic, disbelief, anger, helplessness. I guess those are the only words I could use to describe it.

Q How has this loss been absorbed by you, Ms. Galbraith, since February of this year?

A Well, I guess emotionally my first reaction was to immediately get dressed and leave the house. I went straight to the Washington Hospital Center, because that's where I felt I could best be of use.

I felt like the family needed someone they knew to be around them, and I guess that's where you feel the helplessness, because there's nothing you can say, nothing you can really do to change the circumstances.

I went through probably close to a week of little to no sleep, which took a draining out of your system. As far as my work, when I did have to go back to work and I came upon the first vehicle I was going to stop, there was an uneasiness in me – I guess a fear.

We all come to the job knowing different possibilities and, when something like this happens – excuse me – you sort of question your faith in people in general and whether they really even care about what [48] you're doing out there, whether there's a regard for you as a person or your position.

It was hard to stop that first car, hard to approach something I didn't know. It took a couple stops to make me realize that most of the people that I deal with are just good – good people. I guess it just helped me become even more cautious in my everyday job habits.

Q Have you noticed whether your fellow troopers have undergone a similar experience? Are they any more cautious? Have they been more hesitant? Have they experienced fear?

A We discussed it. The first few days back to work it wasn't uncommon to meet other co-workers in a cross-over at a certain location and just discuss things, work things through.

You could sense, not only in their voices but their wives' or spouses' voices, the fear and concern. It's become a habit for most of us now to tell each other to be careful.

Q I take it that for a Trooper, man or woman, fear is not something that is readily acknowledgeable by people in your profession?

A Not – no, we don't acknowledge it all the

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PRINCE WILLIAM COUNTY CIRCUIT COURT

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Douglas Buchanan – Direct

[53] than a co-worker?

A No, I didn't; just as a – as my shift partner and as a friend.

Q How would you describe Trooper Cavazos?

A Very nice man, very easy to get along with, a very kind person, always willing to help you out, always could depend on.

Q Did you have occasion to watch him in the course of traffic stops?

A Yes, I did.

Q How was his demeanor and how did he treat the public?

A He was extremely friendly, very outgoing, very helpful, very personable person, very polite, took time out to explain things to people.

Q Did you ever see him be aggressive in any manner?

A Never.

Q Now, sir, you say that you – and I think your testimony the other day indicated that you actually tried to assist him and revive him? Is that correct?

A Yes, I did.

Q You were unable to do so? Is that correct?

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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[56] Q Are you trained for anything else?

A No, I'm not.

MR. EBERT: That's all I have.

THE COURT: Mr. Baker?

MR. BAKER: No cross.

THE COURT: Thank you, Trooper. You may have a seat.

(Witness excused.)

THE COURT: Next witness?

MR. EBERT: Mrs. Cavazos.

Whereupon

LINDA CAVAZOS

a witness, was called for examination by counsel on behalf of the Commonwealth, and, after having been duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION

BY MR. EBERT:

Q State your full name, please, and give your address.

A I'm Linda Queen Cavazos. My address is 10079 Greenwich Wood, Nokesville, Virginia.

Q I know it's hard for you, ma'am, but I'll ask you just a few questions, if you don't mind.

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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Lonnie Weeks, Jr. – Direct

[62] MR. BAKER: How long, sir?

THE COURT: About five minutes.

Ladies and gentlemen of the jury, at this time, the Court's going to take a brief recess. If you'll please, go with the Bailiff. We'll be in recess for about five minutes.

(A brief recess was taken.)

THE COURT: Are you ready to proceed, counsel?

MR. BAKER: Yes, sir.

EVIDENCE ON BEHALF OF DEFENDANT

MR. BAKER: I call the Defendant to the stand.

THE COURT: Mr. Weeks?

Whereupon

LONNIE WEEKS, JR.

the Defendant, was called for examination by counsel on his own behalf, and, after having been duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION

BY MR. BAKER:

Q State your full name, please?

A Lonnie Weeks, Jr.

Q How old are you, sir?

A Twenty-one.

[63] Q Sir, what was your father's name?

A Lonnie Weeks, Sr.

Q When did he die, sir?

A 1982.

Q Where were you at that time, sir?

A I was in Fayetteville, North Carolina.

Q What happened – I'll ask another question. Do you have any brothers or sisters, sir?

A Yes, I do.

Q Who are they, sir?

A I have a younger brother.

Q What is his name?

A Deangelo Van Weeks. I have an –

Q How old is he?

A He's fourteen.

Q Who else do you have, sir?



A I have two younger half twin sisters and I have an older sister. She's twenty-three.

Q Would you speak up, please? We've got to hear you.

A I have an older sister, and she's twenty-three.

Q Now, after your father died, who did you live [64] with?

A My grand – well, I lived with my mother for a while.

Q What's your mother's name, sir?

A Aleena Mae Weeks.

Q Speak up, please.

A Aleena Mae Weeks.

Q Sir, how long did you live with your mother?

A It's maybe three, four years.

Q What happened – when did you cease living with your mother?

A When I was in the eighth grade.

Q Okay, what happened then, Mr. Weeks?

A We was living in Washington –

Q Speak up.

A We was living in Washington and came back, moved back to North Carolina in the eighth-grade year. My grand – I mean, my mother, she let us stay with our grandmother, Evelyn Leach.

Q Okay, so you left – you were left with your grandmother? Is that correct?

A Yes, sir.

Q How old were you then, Mr. Weeks, and speak [65] up, please. I'm having difficulty hearing you.

A I'd say I was about fourteen or fifteen.

Q When did you see your mother after that?

A I saw her occasionally. I can't really gave [sc] a specific time when I seen her, but I saw her occasionally, and I think the last time I saw her was in '91.

Q You haven't seen your mother since 1991?

A No, I haven't.

Q Have you tried to find her?

A Yes, I have.

Q Were you able to?

A No, I wasn't.

Q You know where she's at?

A I know she's in Fayetteville, North Carolina.

Q Now, you were left with your grandmother. What's her name?

A Evelyn Leach.

Q She raised you; did she not?

A Yes, she did.

Q You went to school at Fayetteville? Is that correct?



A Right.

Q What schools did you go to, sir?

[66] A I went to –

Q Speak up.

A Ann Chestnut (phonetic) Junior High School and 71st Senior High School.

Q You graduated from high school, did you not?

A Yes, I did.

Q What – did you have any special activities when you were in high school?

A When I was in the ninth grade, I played basketball, football and ran track. Tenth grade through twelfth grade I played basketball.

Q You played basketball for three years? Is that correct?

A Four years.

Q For Fayetteville 71st High School?

A Yes, I do.

Q Were you a starter?

A Yes, I was.

Q As a result of your playing, did you have the opportunity to go to college?

A Yes, I did.

Q You had scholarships?

A Yes, I did.

[67] Q Why didn't you take advantage of those scholarships?

A Well, at the time, I was involved with a young lady named Tina Townsend and she was pregnant and, at the time, I felt that I didn't want to leave her by herself.

My grandmother was encouraging me to go to college; it would be best interest of my future. But, at the time, I was thinking that I was doing the right thing by being by her side and waiting to go to college later.

Q You were academic ineligible the senior – the final part of your senior year, correct?

MR. EBERT: He's leading the witness now.

MR. BAKER: I'll rephrase the question.

BY MR. BAKER:

Q Why weren't you able to play the latter part of your year?

A Academics, at the end of the year.

Q What offers did you have at that time, after you graduated?

A I still had a scholarship at Mount Olive, four-year scholarship. They was going to send me to Tech for two years – junior college.

Q Why didn't you go take that scholarship?

[68] A Because, as I stated, my girlfriend at the time, she was pregnant.



Q How many children do you have?

A I have two.

Q What are the mothers of your children?

A Where are they?

Q No, what are their names?

A Tina Renee Townsend and Tamika Smith.

Q How have you tried to support your children?

A I've worked and, at one point in time, I went a wrong route and I tried to sell drugs, marijuana.

Q Now, what church did you go to, sir?

A Church of God, C and Adams Street.

Q Where is that located, sir?

A It's located in Fayetteville, North Carolina, downtown.

Q How often did you go to church?

A Every Sunday.

Q How long did you continue to do that, sir?

A I went to church until my last year of high school.

Q When was that?

A My last year of high school.

[69] Q Speak up, please. How often did you attend church after that?

A Not that much.

Q Were you – what activities did you participate when you went – attended church?

A I was in the choir. I was in the play. As I got older, I just – regularly just went to Sunday School and church.

Q What kind of jobs have you had, sir?

A My first job, I worked at Red Lobster. I think that was in –

Q What did you do?

A A [sic] was a bus boy. My second job, I worked at Holiday Inn, and I worked in the convention center. My third job, I think it was in '91, I worked at Best Products. I was a salesman, and then I worked at Mountasia (phonetic) Miniature Golf Course. I was working at the cashier.

I left North Carolina in '92, the summer, and went to Washington, and I worked at McDonald's the whole summer. When I went back to North Carolina, I got my job back at Mountasia, and I worked as a maintenance man. I quit the job at Mountasia and got a job working inventory [70] at Accu-Count.

Q Who did you live with in Washington?

A My grandparents.

Q What is their names, sir?

A Gloria Dukes and Louis Dukes.

Q After you returned to Fayetteville, what did you do then?



A I got back to Fayetteville in '92. That's when I started working at Mountasia. It was still hot. When the winter came, I was working outside and I didn't like it, so I got another job working inventory, which consisted of going out of town every day counting stores, and I worked at that job for about two months, two, three months at the most.

That job consisted of working – I worked in the beginning from four in the morning to one the next morning. This was every day, and I couldn't see my kids, like two, three weeks at a time, so I quit and wanted to get another one, another job and, at the same time, I wanted to enroll in barber school.

Q Sir, what kind of transportation did you have?

A Well, some jobs I had to walk. Other jobs I had to find the best ride that I would get.

[71] Q How many cars have you owned?

A I never owned a car.

Q Why?

A I never could afford to get one.

Q Now, did the time arise when you were selling drugs?

A Yes.

Q When was that?

A This was in '91, after I graduated, and I had moved in with my girlfriend at the time.

Q Which girlfriend is that?

A Tina Townsend. We was kind of struggling, so I thought I'd just take the easy way out –

Q Speak up, please.

A I thought I would take the easy way out and sell drugs; it was fast money.

Q When were you arrested?

A I was arrested in – I think it was the end part of December.

Q When did you go to court on that charge, sir?

A I went to court on that charge – I think it was April.

Q What happened to that – at that charge?

[72] A They gave me three years suspended and five years probation.

Q What were the conditions of those – probation?

A I wasn't supposed to get in trouble.

Q Speak up.

A I wasn't supposed to get in no type of trouble. I have no firearm. I ain't supposed to have no dirty urine and report to her on schedule.

Q When did you come to know Luther Waddell?

A I knew Luther for awhile, but I just knew him because he went to my school. I didn't never start hanging around Luther until –

Q Speak up, please.



A I didn't start hanging around Luther until the beginning of January of '93.

Q Did Luther come to you – did you and Luther, in fact, engaged in drug dealing?

A He never engaged me. There was times when we thought about it and we tried to. We saw that our friends, everybody else, a lot of our associates were selling drugs. They was making a lot of money, nice cars, and [73] we wanted the same thing, and the jobs that we was working in wasn't really paying us enough to have that. So, we was going to get our money together and try to get some – we knew that cocaine was faster than marijuana, so we wanted to try to get cocaine. But, our money could never get right, and we never was able to purchase no cocaine in order to make more money. There was times when we had our friends try to give us some to start like that, and we tried that one time, but we was really kind of nervous about doing it, being on the street, because everybody was always – the cops was always coming around and it was very hard.

Q Now, when did you acquire the gun, the Glock nine millimeter?

A I got the gun in, I think it was January.

Q How did you acquire it, sir?

A I had a friend named Ronald Dawson and we used to call each other from time to time; and, one day before I was going to work, I called him to see how he was doing, and he was nervous and he told me about his cousin shot somebody, and he thought the police was going to come over there, so he asked me to hold it for

him until everything – until everything cleared up and he wanted me

* * *

[75] A Yes, he did.

Q How did he do that?

A One day we was in the trailer park and we had friends down there who sold drugs or hung out. It was like, the people go there and hang out, talk, and he thought that me and Luther was out there selling drugs, because he felt he had to take over the trailer park and nobody could sell drugs in that trailer park, if it wasn't his.

So, we tried to tell him that we wasn't selling no drugs. We was just down there, so he left, came back and he had a pistol in his hand, and I was sitting on the ground. He grazed across the tip of my head with it and he told me to get up; if I get up, he was going to shoot me.

Q What did you do?

A So, I just sat on the ground and he, you know, the crowd was out there. I just sat on the ground until he left. He left; he came back; like he was tempted to do something but he never did nothing. Luther and I, we just left and went to my house.

Q I didn't hear that.

A Luther and I, we left and went to my house.

[76] Dutlow's friends, which I was acquainted to, they was telling me that he was going to kill me. But, see,



prior to that incident we ran into an incident of a female, and it was a personal thing between him and I and nobody else knew.

He had – I guess he had a grudge towards me or something, and I figured he had to get something to start off the conflict; and asked one of his friends, I said, "Why is he going off like this towards me?"

He said, "It must be something personal between you two." Right then, I knew what it was.

He kept saying that he was going to kill me if he saw me or kill Luther if he saw him. So me and Luther, we didn't know what to do. We wasn't – we were just going to hide in the house.

So, you know, we still went places, but we was always looking over our back, and we felt like we needed some protection, but we never really seeked (sic) to get it, because we barely ran into Dutlow that much after that incident.

Once I got – acquired the gun in my hand, first it was under my house. I kept it under my house. Then, once the threats started getting worse, I felt that [77] I had to have it. But, there was no way I could have it because you couldn't walk down Bunces Road really without – if you was nice dressed, maybe have some jewelry on, which I was a nice dresser. I had some jewelry – they would stop you, thinking that you had drugs on you walking down the street.

Q Who would stop you?

A The police would stop you and check you, so there was no possible way that I could carry a gun on me

and – without me knowing that I would get stopped and get checked.

There was times where we wanted it, and there was times when I went to work, and he said, well, he was going to go out somewhere and he needed it, so I gave it to him to protect himself. He said if something go down and you feel like Dutlow going to do something, he going to retaliate to that. He said Dutlow doesn't do nothing, he's not going to do anything, because he said he didn't want to hurt nobody if nobody wanted to hurt him.

Q Speak up, please.

A He said he didn't really want to hurt no one if nobody didn't want to hurt him.

Q Now, when did you make the decision to break [78] into Mr. Farmer's apartment?

A At the time I was involved with LaTanza Edwards and I was – was over her house one day and Luther came over there and he told me that a dude named Jake told him about this house, that Farmer was going to be locked up and we could go in the house.

So, I thought about it and I talked to LaTanza. She told me, "No, don't go, you know, that's not you. Don't go." But, you know, I was being more and more tempted by Luther, you know, to get some money.

So, I left. I went with him. When we got there, the glass was broke. The house was all messed up, and there was a TV that we took and stereo equipment, and we loaded it on a truck; and, as we was about to leave, our attention somehow just got onto a cabinet in the kitchen.



I opened it up, and there was this purple bag with the Volkswagen keys in it. So, I wondered if this was the keys to the car in the front, which Luther had told me it was his car. We tried it and it was.

So, right then that moment I was kind of excited to have – to be able to have a car that maybe I could drive that I never had. Then, you know, as the [79] night progressed, I started to think, well, I want to go to barber school and try to get another chance of playing basketball at the barber shop (sic).

My family in Washington, they have a family reunion every year, and I usually make some of them. I haven't made too many, and I wanted to see them real bad. I knew that I was going to be busy and I wasn't going to see anybody. So, I wanted to see them real bad. I mean, my mind was just focusing on seeing them.

So, that's when I left the next day to see them. And, before I left, I saw Luther and he asked me, he said, "What can you do with this car?" I asked him, "What do you mean?" He said, "What can you do with the car?"

Q Speak up, please.

A I said, "Well, I really can't do nothing with it. What you want me to do with it?"

He said, "Whatever you can do to try to get some money or something." I said, "Well, I don't really know nobody in Washington who could do anything like that." He said okay, so I left.

On the way, I stopped past my cousin house and I picked up my cousin.

[80] Q Who was your cousin?

A Eric Baker.

Q So, what happened then?

A Well, I told him – told him that I was leaving two, three days to go see my family and come back. Eric insisted that he wanted to come with me. I told him that there probably wouldn't be no room for him where I'm going because there's probably not enough room for me.

He said, "Well, I got a place that I can go in Virginia, Richmond, Virginia, stay with a friend." So, we called his friend and asked if he could stay, and his friend said yes. So, we left and went on the road and I dropped him off in Richmond.

I proceeded to keep going to Washington. I arrived in Washington late Monday night about ten, I guess.

Q How long were you in Washington?

A From Monday to – to that Wednesday.

Q Why did you – were you heading south, or headed down 95 South this fatal night?

A Because my grandfather had got in touch with my uncle to get in – so he can get in touch with me to let me know that my cousin was calling all night for me. [81] So, we was over a friend of his house and then I got in touch with my grandfather and he told me that my cousin was calling to get in touch with me.

So, I called the house where he was at and I talked to the guy that was there and he told me that Eric was upset; he wanted to leave the house. So, I talked to Eric,



and Eric, he said that he didn't want to stay there no more. He was having some type of problems with the person that was at the house.

I told him, I said, "Look, it's very late and I don't want to be on the road this late." He told me, "Well, if you don't come get me now, then I'm just going to go down the street somewhere and just go somewhere."

And, that I brung (sic) him up there, I kind of felt he was my responsibility. You know, he a grown man, but he's still family. So, I said, "Okay, well, I'll come and get you. Ask your dude if – I mean, ask your friend that's with you if he got some gas money so I could come and get you."

He said yes, so I left, and I told Dukes that I was going to go by myself to pick him up.

Q Which Dukes are we talking about?

A Louis Dukes.

[82] Q What relation is he to you?

A He's my uncle. He said, "No, I'll go with you." I said, "No, you can stay here. I just probably see you tomorrow or something." He said, "No because, you know, it was kind of late and you need somebody with you." I said okay.

He said, "Well, either you can drive there, I drive back or vice versa." I said, "Okay, you drive there and then I will drive back." So, he drove, and that's when we started to go to Richmond.

Q What happened when you first saw the police?

A Well, I knew my uncle, he was speeding kind of fast, but, you know, I was just sitting in the passenger seat. I was letting him drive.

As we approached the officer's car, I saw the reflection, and he was going – he was going pretty fast, so we went passed him very quick and, as I looked back, I told him, I said, "Oh, no." Then, as I looked back, I didn't see the car coming. So I said, "Well, he must have figured we was going too fast and he didn't want to worry with it."

But, as we got down a little bit further, he was still going fast. He – that's when I looked back [83] again and I saw him coming up, where he was at, and the lights flashed, and he was very far behind us.

So, as we was going, we slowed up, my uncle slowed up. By the time we got to the ramp to Dale City, officer was real close. He was behind us, so my uncle decided he would pull over on the bridge part.

Q Speak up.

A He decided he would pull over on the bridge part. So, we stopped and, at this time, I was very nervous.

Q Why were you nervous?

A Because I knew that I was on probation and I knew that the car was stolen, and so we just sat there for a while. When he stopped behind us and he came up to the door, Dukes – and he asked for his license and registration. So, Dukes gave him his license and a piece of paper from the glove compartment.



He told him to step out the car, so he stepped out the car.

Q Speak up.

A So, he stepped out the car, and I was still sitting in the front seat. Then, the officer, he said – he asked me to get out the car.

[84] So, when I looked down on the floor and the gun was under the mat, and there was a rail – we was close enough to a rail so, as I was stepping – as I was going to step out, I thought I was going to toss it over the rail.

As soon as I step out the car –

Q Where was the gun when you stepped out of the car?

A It was in my hand. When I stepped out the car, the gun was in my hand. I had it by the handle and I was going to toss it. And then I gripped it.

Q What?

A And I gripped the gun. And, before – before I explain what happened, I feel that, in order to maybe people in this Courtroom to understand where I'm coming from, I think that maybe –

Q Speak up.

A I think that maybe a Christian or a person who believes in God and the devil will understand what I'm about to say.

And, as I stepped out the car, it was just like something had just took over me that I couldn't understand. It

was like something – I felt like [85] something – the best way I can describe it is like something – I can't say something. I knew what it – well, to me, I felt like it was evil – evil spirit or something. That's how I feel. That's the best way I describe it.

In my body, I just – I mean, I couldn't hear nothing, and I just remember afterwards, not at the time, that I started firing the gun. And, once it stopped, I remember my ears popping. My hand came back and it was like something just left me, like left me just standing there, and I couldn't – I was standing there looking at the trooper, and I was just in a daze, couldn't believe what just happened. I didn't want to believe what just happened, but I knew that I had done it, because it just was in my hand. But I still couldn't believe it, so I was standing there, and I looked at my uncle, and he almost looked, maybe as a ghost or something.

He had a lot of fear in his face, and I guess he figured – I mean, he knowed (sic) that I never even attempted to do anything violent before, and it was a surprise to him –

MR. EBERT: Your Honor, he can't testify to [86] what his uncle had on his mind.

BY MR. BAKER:

Q Just what you saw, you can relate to, but not what he felt.

A Well, he looked at me in a very surprised – and he act like he didn't want to move because maybe – I thought that maybe he thought I was going to hurt him, because he just felt like I flipped or something. So, I just looked, turned back and looked at the trooper again. I



just could not move from the spot that I was in, it was beside on my side.

So, my uncle, he came from around the car and he told me to get in and drive. At the moment I still couldn't move and he had to push me. And, when I got in the car, I drove.

And he looked at me, and he said, "Damn, damn, look what just happened, what you just do." I don't remember saying anything. I was in a daze. It was like – I think he said something like, "I can't believe that you just did this" or something.

Q Speak up.

A I think he said, "I can't believe that you done this." I think I might have said, "Well, I can't

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[88] there." I said – I was still running, and I said, "Okay." So, when I went back, there was – there was some cars out there lined up on the side. So, when I went back there, there was a – I saw a man on the ground on his face. Then there was a black man, an officer, and I think another man, and he was, I think, calling the trooper's name. He said, "Please help me turn him over."

So, the black man was by his upper body, his arm. The officer had his head and there was another man on the other side of – was on the other side of his body, and I was by his feet. He said, "Okay, let's turn him over." So, we all turned him over together.

Then, when I looked at him, he had blood and stuff on his face and body, and I turned my head. At that

moment, I wanted to say something, but I just was too scared to; I couldn't. I know the good in me wanted to, but I guess the bad in me just wouldn't let me.

So, as I was walking off, I saw my uncle's license and I picked it up and I put it in my pocket, and I started to go down the road, back down the highway, and I remember people at the scene, they was telling cars to

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[95] I became a little fearful for my life. I talked to my little brother about it one night. I told him, I said, there's some conflict going on between me and somebody.

Q Speak up.

A I told him there's some conflict going on between me and an individual, and I said he wants to kill me over something very petty. I told him, I said, I feel I have to protect myself.

Q Why did you – why did you break into that house? Why?

A Well, I guess I could say more as – before, I knew I was in contact with the Lord and my life was going very well, and He was helping me achieve the things that I wanted.

By the time I got in twelfth grade and I stopped going to church, I didn't really actually say this, but I guess I felt like I didn't need Him any more, and so, to myself I say, well, I'm paying for – by my turning my back on Him, I obviously have an indecent mind.

When Luther came to me and talked to me about it, I just went along with it.



Q Why did you take that car?

A Because I had a one-track mind at the time and I was just so anxious – just so anxious to see my family in Washington again before I came back.

Q Now, you went to church for eighteen years of you life? Is that right?

A Yes.

Q You knew right from wrong, did you not?

A Yes, I did.

Q Can you explain what record – let me rephrase.

How much – had you ever gotten into trouble prior to that marijuana arrest?

A Never. I was – I really – I could have gotten in trouble, but I really couldn't have gotten in trouble because I was so busy with basketball during the school time and, in the summertime, I was at basketball camp, and I was going to church and my life just felt like it was right.

The trouble was – I wasn't around anyone who really got into trouble, so I just – I wasn't around any trouble. It was like I had friends and they wasn't the best of friends but, nevertheless, they was my friends. But –

[97] Q Speak up.

A But I didn't – you know, I didn't break into houses or think about doing things like that, I guess, until – until Luther came along. I started hanging with him, I'd say, about two months – two months.

MR. EBERT: Your Honor, I'm going to object to having him repeating what counsel has told him.

THE COURT: Sustained.

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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Bennie D. House – Direct

[102] DIRECT EXAMINATION

BY MR. BAKER:

Q Sir, would you please state your full name?

A Bennie David House.

Q Sir, what is your current address?

A 1954 Merrimac Drive, Fayetteville, North Carolina.

Q Sir, how are you employed?

A I'm a teacher and an athletic coach at Cumberland County Schools.

Q What school do you teach at, sir?

A I'm at 71st High School.

Q Now, sir, do you know the Defendant, Lonnie Weeks, in this case?

A Yes, sir.

Q How do you know him, Coach House?

A Lonnie was a member of our varsity basketball team for a year and a half. He came through our JV program in the tenth grade – we are grades ten through twelve – and was with us three years.

Q Now, did you have a great deal of contact with him when he played for you, Coach?

A Well, you do. It's almost daily, except [103] Sundays.

Q Did you talk to him a great deal?

A I try to split my time between all my ball players, yes.

Q Now, sir, do you know – how long have you lived in the Fayetteville area?

A This is our tenth school year.

Q Sir, you're familiar with the Fayetteville area, are you not?

A For ten years I am, yes, sir.

Q Do you know where Lonnie Weeks is from, where he lived?

A I know that he stays with his grandmother up on Bunces Road.

Q Sir, are you familiar with that area?

A Yes, sir.

Q Can you tell the jury what kind of area that is?

A It's a very horrible area. It's a horrible area to live in.

Q Why is that?

A Because of the crime rate. It's not safe to walk the streets. The road – it's not streets, but [104] they're roads



basically. It's a crime – the drugs, weapons, shootings, killings.

Q What kind of – how good a basketball player was the Defendant when he played for you?

A Lonnie came through and developed into a very fine basketball player; was our captain his senior year and was our leader his senior year. Basically, was our sole senior.

Q What were his characteristics as a basketball player? What did you notice about him specifically?

A Very competitive, always – always given every ounce of energy for the – for the game. He was on a team as a junior that was lucky enough to win a Holiday Classic championship and also a Conference championship, which in our area is very big.

Then, as a junior (sic), he had to shoulder a lot of the responsibility. He was our captain, our leader and, unfortunately, we lost him in January with grades. That was the only negative I can say, as far as he did not really have the grades, you know. As much as I talked and encouraged the grades, he still came up short in two courses.

He passed four out of six at the midterm. He [105] came back strong and, of course, he graduated in '91 at 71st High School.

Q Sir, you're familiar with his disciplinary record at Fayetteville 71st?

A Yes, sir.

Q Were you aware that he ever was expelled from school for any reason?

A Not in-school suspension or out-of-school suspension; never in a fight.

Q Sir, you say he was a fierce competitor on the basketball court. Did you ever – did he ever get in a fight in any of the games you coached?

A Never a fight; never a technical; always – always handled himself real well.

Q Now, sir, what was your reaction when you heard –

MR. EBERT: Your Honor, I'm going to object to that. His reaction as to – probably like a lot of people. I don't think that's relevant in this case, what somebody's reaction is to a given action somebody would take.

MR. BAKER: Your Honor, I believe it's relevant that the fact that – because of his character [106] and his past, that he thought it was – he was just shocked because it was so hard to –

THE COURT: Well, go ahead. I'll allow the question. Go ahead.

BY MR. BAKER:

Q What was your reaction, Coach House, when you heard this?

A Disappointment.

Q I beg your pardon?

A Disappointment. Horrible situation, horrible, to say the least, but disappointment, because somebody's



come through – well, somebody's come through our program and – just disappointment.

Q Had you ever observed anything in his past to indicate that he would do something like this?

A No, sir, not in the – no, sir, not – very behaved when he was – the three years he was at 71st High School.

MR. BAKER: May I consult with my co-counsel?

THE COURT: You may.

(Counsel confer.)

MR. EBERT: We don't have any objection to that, Your Honor, if he puts a picture of the basketball

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[108] Q Coach House, were you familiar with the Defendant's economic conditions, his family condition with respect to money?

A Pretty much. I knew that Lonnie lived with the grandmother and she was working, as well. I try to make it a point of knowing where the players live, what area they can live in. I can better relate to the kids that way.

Knowing that he lived with his grandmother, you know, she's the – was the working – the working – at the time he was there, his grandmother did most of the work and his grandfather, at the time, was very ill and passed away some – I think in '90, so a very, very hard situation economically.

Q Sir, the school – you encouraged them to attend basketball camps, did you not?

A Well, we stay pretty active during the off season. We don't overdo it. We allow time for free time for other things that they've got to do besides basketball, of course, but we –

Q Was he able to attend these camps?

A Well, we – we try to make sure. They cut yards and trim lawns and do things like that in the

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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Tony McBride – Direct

[114] Q You know the Defendant in this case?

A Yes, I do.

Q Sir, how long have you known the Defendant?

A I know him for sixteen years.

Q How did you come to know the Defendant?

A I came to know him since I was about six years old growing up in Bunces Road, North Carolina, Fayetteville.

Q How often did you see him when he was growing up?

A I would see him on a weekly basis about six to five times a week.

Q How long did this continue?

A It continued throughout elementary, junior high and high school.

Q Okay. Did you have any activities with the Defendant?

A We played basketball together in junior high and the back yard or my yard.

Q Did you attend high school with him?

A Yes, I did.

Q That was Fayetteville 71st, was it not?

A Yes, sir.

[115] Q Sir, during the time you've seen the Defendant, did you ever see him get in any fights?

A No, I haven't, any fights, nothing like that.

Q Did you ever see him threaten anybody?

A No.

Q Now, when was the last time you saw the Defendant?

A Last time I saw him was right after high school, I'd say after I was in community college, about a good half a month into my curricula.

Q You're aware of what he stands convicted of here today, are you not?

A Yes, sir.

THE COURT: Mr. Willett?

MR. WILLETT: No questions of Mr. McBride.

THE COURT: Thank you, sir.

May we excuse Mr. McBride?

MR. BAKER: Yes, sir, he may also –

THE COURT: Mr. McBride, thank you for your time and testimony. You're excused. You may go. Thank you, sir.



(Witness excused.)

THE COURT: Your next witness?

PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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Sean Beamon – Direct

[116] MR. BAKER: Mr. Sean Beaman, sir.

THE COURT: Mr. Beaman?

Whereupon

SEAN BEAMAN

a witness, was called for examination by counsel on behalf of the Defendant, and, after having been duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION

BY MR. BAKER:

Q State your full name, sir, please?

A Sean Michael Beaman.

Q Sir, what is your current address?

A 6494 Terrytown Drive, Fayetteville, North Carolina.

Q Do you know the Defendant in this case?

A Yes.

Q Sir, how long have you known the Defendant?

A About eleven years.

Q How did you come to know him, sir?



A I grew up with him when I moved to Fayetteville.

Q During this period of time, did you associate with him?

[117] A Yeah.

Q In other words, were you around him?

A Yeah.

Q Did you go to school with him?

A Yeah.

Q Play basketball with him?

A Not really, but, you know –

Q Did you see him every day during the time you grew up?

A Yeah, basically.

Q Now, during the time that you've known him, did you ever see him get in any fights?

A No.

Q You ever see him threaten anybody?

A No.

MR. BAKER: Your witness, Mr. Willett.

CROSS EXAMINATION

BY MR. EBERT:

Q Just a couple of questions, Mr. Beaman. You saw him on a daily basis?

A Yes.

Q Would that be after he graduated from high school?

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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Renee Rogers – Direct

[119] jury.

A Renee Rogers.

Q Ma'am, what is your current address?

A 220-D Wilbur Avenue, Fayetteville, North Carolina.

Q Do you know the Defendant in this case?

A Yes.

Q Ma'am, how do you happen to know this Defendant?

A He's my nephew.

Q Ma'am, how long have you known him?

A Ever since he was a baby.

Q Were you aware of his family situation?

A Yes.

Q Did you know his father?

A Yes.

Q When did his father die?

A In 1982.

Q Where – when – excuse me.

Who took care of Lonnie at that time?

A Well, at that time, he was living with his grandmother.

Q Okay. Where did his mother go?

[120] A I don't know.

Q How did Lonnie come to live with his grandmother?

A Well, after his father passed away and he had went back to Washington for a little while, then he came back to Fayetteville, North Carolina, and the only person that was there to take care of him was his grandmother.

Q How old was he at that time? Do you remember?

A About twelve.

Q Now, did you see Lonnie often?

A Every day.

Q What was he like around the house?

A Quiet. He was pretty good, and he was quiet.

Q Ma'am, did his mother ever come back to the house?

A Maybe once or twice, but not on a permanent basis.

Q In the time you saw Lonnie around the house, did you ever see him get in fights?

A No.

Q Was he always respectful?



A Yes.

Q Did he do what he was told?

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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Juaneza Vivian – Direct

[121] A Yes.

Q You're aware of what he's done?

A Uh-huh.

MR. BAKER: Mr. Willett?

MR. WILLETT: No questions.

THE COURT: May we excuse this witness?

MR. BAKER: Yes, sir.

THE COURT: Ms. Rogers, thank you for your time and your testimony. You're excused and you may go.

(Witness excused.)

THE COURT: Your next witness, sir?

MR. BAKER: Ms. Juaneza Vivian.

THE COURT: Ms. Vivian.

Whereupon

JUANEZA VIVIAN

a witness, was called for examination by counsel on behalf of the Defendant, and, after having been duly sworn, was examined and testified, as follows:



DIRECT EXAMINATION

BY MR. BAKER:

Q Please state – well, state your full name, please?

A Okay, Juaneza Vivian.

[122] Q Would you spell that, please, for the court reporter?

A J-a-u-n-e-z-a, last name, V-i-v-i-a-n.

Q Ma'am, what is your current address?

A 6487 Terrytown Drive, Fayetteville, North Carolina.

Q Ma'am, do you know the Defendant in this case?

A Yes, I do.

Q How long have you know him?

A Since he was about age seven; I guess fourteen years, about 1979.

Q How did you come to know him, ma'am?

A I know – I'm a real close friend of his grandmother. I met him when his parents brought him from Washington, D.C.

Q Ma'am, how often did you visit his grandmother?

A Very often. So often that the children nicknamed me "Furniture."

Q What was he – what was he like, ma'am, as a child growing up in the house?

A He was very polite, pleasant child, well behaved, had good manners.

[123] Q When you say well behaved, what do you mean by that?

A Easy to discipline and not rowdy, unruly, you know. He was a good kid.

Q Did you know Lonnie's mother?

A Yes, yes.

Q How long has it been since you've seen her?

A I can't say, but it's been years.

Q Ma'am, was he – you say he was a good kid. Did he do what he was told?

A Yes.

Q Did you ever see him be disrespectful?

A No.

Q Now, what was your reaction when you learned of this?

A I was shocked. I was really shocked.

MR. EBERT: Your Honor, again, I'm going to object to that. Anybody's reaction isn't relevant in this case.

MR. BAKER: I believe Your Honor allowed me to ask Coach House that question.

THE COURT: Let's proceed. I'll allow it.

THE WITNESS: First, it was just totally out [124] of character for Lonnie for me, and plus, then, when



the news came and I found out it was a police officer, I was just horrified, to tell you the truth.

MR. BAKER: Excuse me, while I consult with counsel.

(Counsel confer.)

BY MR. BAKER:

Q Ms. Vivian, did you attend church with Lonnie?

A Yes, we all attended the same church together C and Adams Street Church of God.

Q Where is that, ma'am?

A Fayetteville, North Carolina.

Q Ma'am, how often did you go to church?

A We – at least twice a week.

Q Did Lonnie and his family also attend?

A Yes, they went with us.

Q Okay, did he come to stop going to church?

A Around in high – around in high school, I guess, when he, you know, didn't go as often as he used to.

(Counsel confer.)

BY MR. BAKER:

Q Do you remember any particular events with [125] respect to Lonnie at church?

A There's one event that stands out in my mind. I forget about how old. He wasn't very old, I guess, maybe,

nine years old. We had a Christmas program, you know, for the youth, put on their program.

Anyway, they wore white shirts and red bow ties and, when he come down the aisle, his face lit up and he threw his chest out and he just strutted. It was like, "this is the most important day of my life." It – that, it may not seem much but, to me, it sticks in my mind.

MR. BAKER: I don't have any further questions of Ms. Vivian. Your witness, Mr. Ebert.

THE COURT: Mr. Ebert?

CROSS EXAMINATION

BY MR. EBERT:

Q Ma'am, what you're telling us is he was raised in a good Christian home?

A Yes.

Q His grandmother's a fine person, isn't she?

A Yes, she is.

Q She gave him what she could?

A Yes, she did.

Q Someone who is not actually a parent but [126] raising him?

A Right.

Q There came a point in time when he began to change; did not go to church?



A About senior year.

Q Did he move away from the home?

A After graduation. I'm not sure, but I think it was after graduation.

Q But he did move away from home?

A Yes, uh-huh.

Q I take it you did not see him as much then?

A No, I did not.

Q You really didn't know what his activities were because you weren't around him, from what you say? Is that correct?

A That's correct.

Q Did you know any of the people that he was running with after he moved away from home?

A No.

Q Would it be fair to say that they were the wrong crowd?

A I would say so.

MR. EBERT: That's all I have.

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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Olden Bryant – Direct

[128] A 110 Roswell Drive, Kernersville, North Carolina.

Q You'd better spell Kernersville for us, if you will.

A Kernersville is spelled K-e-r-n-e-r-s-v-i-l-l-e.

Q You stated you're a Sergeant Major, United States Army, retired?

A Yes, I am, Sergeant Major, United States Army, retired.

Q Do you know the Defendant, Lonnie Weeks?

A Yes, I do.

Q Sir, how did you come to know the Defendant?

A I came to know him because he moved from up north when he was a young age of seven or eight, so I had some kids about his same age, and I got to know him through them.

By him playing with my oldest daughter, which is about his age, I grew attached to him and, after his problems with his family losing his parents, losing his father, I got more attached to him as a son I never had. I had three daughters.

Lonnie just became attached to me like one of [129] my own; and, as time went by, he stayed at my house about as much as he did his own.



Q Mr. Bryant, where did you live? If you live in Kerners – where did you live previously to living in Kernersville?

A Previously, before then, I lived 16491 Terrytown Drive.

Q Where is that in relation to where the Defendant lived when he grew up?

A That is directly in front of his house, his grandmother's house.

Q You say you took an interest in him?

A Yes, I saw a lot of potentials in Lonnie, after he had that traumatic moment with his father, and I played with him a lot. I saw a lot of potentials in him, so I kind of took up on him.

Q What kind of activities did you participate with him?

A With Lonnie, we played a lot of sports together, especially basketball and south ball. In addition to that, I had him do a few things for me around my house.

Q Sir, did you attempt to influence him to go in [130] the Army?

A Definitely. I had talked to Lonnie about joining the military a few times, and he was interested. At the same time, the potentials I saw in Lonnie going to college and his ambition for wanting to go to college, I wanted him to make his decision, his mind up which direction he wanted to go.

Q Were you concerned about Lonnie, after he graduated from high school?

A Constantly. I used to see some acquaintances that would come over and visit Lonnie and I would tell him some of the acquaintances were bad medicine, you don't need to be with this guy. They [sic] way they'd look, with my experience, you get to identify those people.

So, after Lonnie graduated, he had a little problem with a female. She had a baby for him. Lonnie was concerned about his kids. He was a kid that was from a broken home, and I guess he didn't want to see that happen to his kid, so he was a family-oriented guy, strong in that department.

Q During the time you knew him, did you ever see him get angry, commit an act of violence?

A I seen Lonnie get angry, but it was on a [131] basketball court, a sporting-type anger, getting pushed around, and that's about it, but not – not a violent type.

Q Did you ever see him swing at anybody when he got pushed around?

A Never.

Q Was he always respectful to you, sir?

A Very. Lonnie's always – he ended up all his conversations with "yes, sir" or "no, ma'am" or whoever he's talking to, around me, when I – when the wife and I talked to him. He was always very respectful.

Q Mr. Bryant, what was your reaction when you learned of this killing?



A I was totally shock. I was totally shock, and I heard the name. I was watching television. I heard the name and, when I saw the photo, I said, "This couldn't be the Lonnie that I used to know."

It really upset me, because I called the whole family in and they couldn't believe it either, that that was the Lonnie that we knew.

MR. BAKER: I'd like to consult with counsel one minute.)

(Counsel confer.)

* * *

[133] A That's correct.

Q You felt, in your judgement, with the experience that you've had in your lifetime, that the best would either be a course along the military, or perhaps a course to college?

A Correct.

Q You did everything in your power to encourage him in that regard, did you not?

A At that time, talking to him, right.

Q In fact, I think you said the last time you saw him was that in November of '92?

A Correct.

Q At that time, you encouraged him to go to college?

A Correct. We talked about – I gave him the Michael Jordan story with the support he had with his wife, because he was concerned about his child.

Q Did he indicate to you that he was going to try to pursue that?

A He said he was going to do something good and make me proud.

Q Did you know that he was on probation for conspiracy to distribute drugs at that time?

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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Trina Hammond – Direct

DIRECT EXAMINATION

BY MR. MORISSETTE:

Q Ma'am, could you state your name and address, and could you speak up so the jury can hear you?

A My name is Trina Hammond. I live at 2710 Tracy, Kansas City, Missouri 64109.

Q Trina, you're Lonnie's sister?

A Yes, I am.

Q You and he are actually half brother and sister? Is that correct?

A Yes, we are.

Q You have different fathers?

A Right.

Q Same mother?

A Yes.

Q Trina, how long have you lived with Lonnie; or, how long did you live with Lonnie when you were young?

A From birth to the age of fourteen.

Q Mr. Weeks, Lonnie's father, was your step-father?

A Yes, he was.

Q Were you close to him?

A Yes, I was.

[138] Q Do you recall his death?

A Yes, I do.

Q Do you recall Lonnie's reaction to it?

A He was – it was a loss. He was very distraught, and he –

Q Could you speak up, please?

A It was a loss to him. I was also going through a lot of stuff. We were both young, so I can't really remember a lot that he went through, a lot of withdrawal. I don't remember, we were always around each other, so –

Q Did you feel close to Lonnie?

A Yes, I did.

Q As you were growing up together?

A Yes.

Q Did you have a close relationship with him?

A Yes.

Q Now, you all moved around a little bit when you were young? Is that correct?

A Yes, uh-huh.

Q Did you start out in D.C.?

A Yes.



Q About what age did you move down to North [139] Carolina?

A I was about nine, so he was about seven and a half, eight.

Q How long did you stay down in North Carolina at that time?

A Until I was – until '82, which I was about twelve.

Q What happened? At that point, did you return to the District of Columbia for a period of time?

A Yes, we did.

Q What precipitated that move?

A My step-father's death.

Q Who in the family went back to the District of Columbia?

A Me, my mother and my two brothers.

Q The other brother is Deangelo?

A Deangelo, yes.

Q Is he about fourteen?

A Yes.

Q Now, about what age did you move back to Fayetteville?

A About sixteen.

Q You were sixteen?

[140] A I was sixteen.

Q Did your mom stay with you when you moved back?

A For – she stayed – me and – we stayed together, her and I stayed together, but my two brothers were with my grandmother.

Q Did there come a time when you and your mother also split up or moved apart?

A About a year later.

Q Do you know after Lonnie started living with his grandmother – is that Evelyn?

A Yes, it is.

Q Do you know how often he and his mother would visit?

A Not very often. I can't really say how often, but it wasn't a lot. Maybe they got to talk to each other over the phone.

Q Did his mother not being with him bother Lonnie?

A Yes, it did.

Q You are familiar with Lonnie's basketball exploits?

A Yes.

[141] Q Are you familiar with his high school involvement?

A Yes.

Q Did he ever get in trouble while he was in high school?



A Not that I can recall, he didn't.

Q How about before high school? Did he ever have any problems in school, discipline problems, anything like that?

A No, no, not really.

Q After Lonnie graduated, did you and he ever have any conversations about how he felt about his mother leaving – leaving him and eventually you?

A Yes, we did.

Q Was this after he graduated from high school?

A It was after.

Q What if anything did he tell you about that, as far as his feelings?

A He told me he was, you know, very hurt that she never made it to any of his games and that she was never around. He tried to please her a lot and she just never made it to see what he – he did, you know, what he had accomplished, and that kind of got to him over the [143] years.

Q Did he ever say anything about –

MR. EBERT: Your Honor, he's getting ready to lead to a witness; I object to that.

THE COURT: Please rephrase the question.

BY MR. MORISSETTE:

Q What if anything did he say about the relationship of his efforts in basketball and his feelings about his mother?

A He tried to be the best player he could be, and she never really recognized him for it. She never said, "You did a good job" or anything like that.

Q To your knowledge, did she ever go to any of his games?

A Not to my knowledge.

Q Did he want her to?

A Yes, he did.

Q You're living in Missouri now?

A Yes, I am.

Q How long have you been living there?

A For about five years.

Q During that five years, have you stayed in touch with Lonnie?

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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Donny M. Dees – Direct

[145] DIRECT EXAMINATION

BY MR. BAKER:

Q Sir, would you please state your full name, sir?

A Donny Michael Dees.

Q Please spell your last name for the reporter, please?

A D-e-e-s.

Q Okay, sir. Sir, what is your current address?

A 1925 Sloan Avenue, Fayetteville, North Carolina.

Q Sir, what is your profession?

A I'm a counselor.

Q Who do you work for, sir?

A I work for the public schools of Robeson County.

Q Do you know the Defendant in this case?

A Yes, I do.

Q How do you know him, sir?

A I know him through church, and from church through school, by being in education.

Q How much – what church is this, sir?

A C and Adams Street Church of God.

[146] Q Sir, how much contact did you have with him – well, let me go back. How long have you known him, sir?

A I've known Lonnie since 1979.

Q Okay. How much contact did you have with him?

A From 1979 to 1991, I served as his Youth and Christian Education Director, and his sophomore, junior and senior year in high school, I was his Sunday School teacher.

Q How often did Lonnie attend church during this period of time?

A He was a regular attender. You could almost count on him being there every Sunday.

Q Sir, how much did you – what did you talk to him about during this period? I'll ask you what kind of things did you talk about during this period?

A Of course, being in athletics myself and serving as a coach and athletic director, we had a lot in common, Lonnie being an athlete. So, we talked a lot about athletics, not only his ability, but after graduating, his potential of playing on the college level.

We would talk a lot. Me being in education, he would ask me a lot of questions about certain colleges and schools, and I would talk to him about that and try to [147] encourage him on continuing his education after high school.



Q Sir, did you observe him in church; notice anything about him?

A Sure.

Q What did you observe?

A Lonnie was very sensitive. A lot of times in Sunday School, of course, he would – he was one that would participate in class, and sensitive from the standpoint, a lot of times in class he would weep and cry over – from the standpoint of – from the lesson. It was very touching to his heart.

He made a lot of comments after class that he enjoyed the lesson; it meant a lot to him. After – a lot of times after church we would talk and communicate.

Q During the time you knew him sir, was he always respectful?

A Always. He addressed me as "yes, sir", "no, sir." I've never heard him say a harsh word or use any kind of foul language.

Q Sir, during this time, did you ever seem display any anger or –

A None, whatsoever.

[148] Donny M. Dees – Cross

Q Now, when did you start – stop –

When did you – your contact with Lonnie decrease?

A After he graduated. That August I had moved to a new church to take on a new type of ministry so, at that time, it was shortly after he graduated.

Q What year was that, sir?

A That was in 1991.

Q Sir, what was your reaction when you heard of this killing?

A I still – I couldn't believe it. A friend from the church had called. I wasn't at home at the time, and give the message to my wife.

I thought she had the wrong person, and so I naturally called the person back to try to find out the nature of the call, and was it the Lonnie Weeks that I knew, because I just couldn't believe it was the Lonnie that I had once taught and was in my Sunday School class.

MR. BAKER: Your witness.

CROSS EXAMINATION

BY MR. EBERT:

Q During his senior year in school, did he cease to be a regular attender at church or do you know?

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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Evelyn Leach – Direct

[151] Carolina.

Q Ma'am, you are the Defendant's grandmother? Is that correct?

A Yes, I am.

Q Ma'am, who is Lonnie's father?

A Lonnie's father was my son, Lonnie Weeks, Sr.

Q Ma'am, how long have you known Lonnie?

A Since birth.

Q Ma'am, did you give him a nickname?

A Yes, I did.

Q What was that?

A Man.

Q Why did you call him that?

A When he was first born and was living with me, he was kind of long, skinny and looked like a little man, so I just nicknamed him Man.

Q Ma'am, when did Lonnie's father die?

A In 1982.

Q What happened after Lonnie's father died?

A His mother moved away and went to Washington, D.C. with Lonnie and his sister and brother for awhile.

Q When did Lonnie return to your house?

A For the last time they returned in 1987.

[152] Q Okay. What happened in 1987?

A In 1987, his mother came and brought him and his younger brother to my house and left them there.

Q Could you tell how that happened?

A She just came back from Washington and came and dropped Lonnie and his brother off and –

Q Were you there?

A No, I was at work.

Q What happened? What did you discover when you got home?

A I was called – I worked eleven to seven at night, and I was called around three o'clock in the morning and was told by my daughter that my daughter-in-law had came by and dropped the boys off and said she'd be back.

Q Did she ever come back?

A No, sir.

Q How old was Lonnie, ma'am?

A Fifteen.

Q Do you know what happened to Lonnie's mother?



A After the death of my son, she got caught up in drugs because of the fact that she couldn't – she said she couldn't cope with life.

[153] Q Where is she now, ma'am?

A I really don't know.

Q Ma'am, does she know about this?

A Yes, she does.

Q She's been told?

A Well, she called when it first happened back in February, and I told her what had happened, and she had promised to come over at that time, but I never saw her.

Q Has she ever seen you since this happened?

A No, sir.

Q Now, you raised Lonnie, did you not?

A Yes, I did.

Q Ma'am, what kind of a child was he around the house?

A At my house? Like I said, I work eleven to seven at night. My husband worked three to eleven. Lonnie was no problem. I never got no calls from school, never got no calls from the principal, teachers or nobody like that about Lonnie.

He was an obedient child – for fifteen years old. He liked to clean. I never had – my house stayed clean when Lonnie was there. He liked to clean, change things around and stuff like that. Very – I mean, he was [154] just no problem.

Q Ma'am, when Lonnie went to high school, what kind – what what – let me rephrase the question.

Was Lonnie a big basketball player in high school?

A Very much.

Q You were proud of him, were you not?

A Very much.

Q Ma'am, I have some newspaper clippings here that I believe came from you. You kept these, did you not?

A Yes, we did.

MR. EBERT: Your Honor, we'll stipulate he's a basketball star. I don't know that newspaper articles concerning somebody is really relevant to this case –

MR. BAKER: Your Honor, I believe I'm allowed to have the jury consider –

MR. EBERT: – with regard to what they said, are they accurate or anything else. I assume that they are, but I don't think they have any bearing on this case.

THE COURT: I'll admit them for what they are, that's a newspaper article.

MR. BAKER: Please mark these as Defendant's

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[158] identification was received in evidence.)

BY MR. BAKER:

Q Now, Ms. Leach, when did Lonnie first – let me go back a minute.



Did you go to church, ma'am?

A Yes, I do.

Q What church do you go to?

A C and Adams Street Church of God in Fayetteville, North Carolina.

Q How far is that away from your home?

A It's about eleven miles from my house; downtown Fayetteville, about – right around the corner from the Courthouse.

Q Did Lonnie go to church?

A Yes, he did.

Q How long did he continue to do that, ma'am?

A Up until he graduated from high school.

Q Ma'am, did – when did you – let me rephrase the question.

When did you first have any difficulties with Lonnie?

A Just before he finished – just before he graduated from high school, when Lonnie, I guess first [159] girlfriend, when he first found out about girls.

Q What happened then?

A Finally he move out from me and move in with his girlfriend. He was out of school then.

Q How old was he, then, ma'am?

A Nineteen.

Q Ma'am, did Lonnie – let me go back.

Ma'am, did Lonnie ever act angry or violently any time he was around you?

A No more than no – any other child would do at times when you say something to them, they might stomp or pout or walk away or something like that. Nothing – no more than that.

Q Was he always respectful to you, ma'am?

A Very much.

Q Did –

A I didn't allow no other way.

Q Yes, ma'am. Did he always work when you told him to?

A Yes, he did.

Q What year did he leave your home?

A In '90.

Q Ma'am –

[160] MR. BAKER: If I could consult with Mr. Morissette.

(Counsel confer.)

BY MR. BAKER:

Q Ma'am, what affect did you notice on Lonnie when his mother abandoned him?

A Sad and quiet a lot.



Q Ma'am, you went to all his basketball games, didn't you?

A As much as I could attend.

Q Do you know that his mother ever attended –

A No, I know she didn't.

Q Now, ma'am, what was your reaction when you heard about this killing?

A I was mad at Lonnie. I was upset. I had a lot of different emotions, but mostly I was mad at Lonnie and upset. I felt sorry for the officer's family. It's just – you really can't explain how you feel.

I couldn't believe this was Lonnie, the boy that I knew that I raised. I couldn't believe this.

Q Ma'am, you have to talked to Lonnie since this?

A Many, many times.

* * *

[164] THE COURT: That matter is resolved.

MR. BAKER: I understand you wouldn't let her testify that she has discussed religion with him, since he's been incarcerated?

THE COURT: She can testify as to anything she has said. It's what he has said that the objection is coming in. You have related to me in this Bench conference, Mr. Baker, that the only thing you're going to elicit is that she has discussed with him about religion, period.

MR. BAKER: That's it.

THE COURT: Not what anybody else said?

MR. BAKER: That's right, not his responses.

THE COURT: All right, sir.

MR. WILLETT: I don't know what she will say to him is relevant. I don't think it's mitigation to have this.

It is simply not competent character evidence because the competent character evidence is reputation evidence.

THE COURT: Counsel, I'm going to let it in. If you've got another matter, I'll hear it. Otherwise, let's proceed and go take a break.



The Court's going to take about a ten-minute break. The jury is in recess at this time; we're going to take about a ten-minute recess.

(A brief recess was taken.)

OPEN COURT

(Whereupon, the jury returned to the Courtroom and the following was had within the presence of the jury.)

BY MR. BAKER:

Q Just one more question, Ms. Leach. Since Lonnie's been in jail, you have discussed religion with him, have you not?

A Yes, I have.



MR. BAKER: That concludes my examination.

THE COURT: Mr. Ebert?

CROSS EXAMINATION

BY MR. EBERT:

Q A few questions, ma'am. Ms. Weeks – Ms. Leach, I'm sorry – how old was Lonnie when he came to live with you?

A Last time?

Q Well, yes.

A Fifteen.

* * *

 A Uh-huh.

Q What was her name, ma'am?

A Tamika. Tamika.

Q Tamika?

A I don't know her last name.

Q He fathered a child by her?

A As far as I know, she came up with this baby after Lonnie graduated from high school and said that it was Lonnie's baby, and that's all I knew, and Lonnie accepted the baby as his baby.

Q Nobody contests that, do they?

A We didn't.

Q Nobody's done any DNA or anything like that?

A We didn't, no.

Q As a matter of fact, you've provided a jury with a picture of that child likewise?

A Right, right.

Q Then, he left that child – I mean, that person, rather – and started with LaTanza?

A Ta – yeah.

Q At the time this happened, he was going with her? Is that right?

A right.

* * *

[178] law, Mr. Willett.

MR. WILLETT: Sir, I do have that aggravated battery.

(Pause in proceedings.)

THE COURT: Counsel, have you had the opportunity to look at the instructions?

MR. BAKER: Yes, sir.

MR. WILLETT: Yes, sir.

THE COURT: Is there any objections to Commonwealth's Number One?

MR. MORISSETTE: No, Your Honor.

THE COURT: Is there any objection to Commonwealth's Number Two, I believe as agreed to?



MR. MORISSETTE: That's with the fine deleted, Your Honor?

THE COURT: That's my understanding.

MR. WILLETT: Yes, that's correct.

THE COURT: Mr. Willett, you're going to provide a clean copy?

MR. WILLETT: Yes, sir.

THE COURT: I see in the first part of the instruction you're going to have to delete some, as well as where you made some delineations later in the [179] instruction, line four, five.

MR. WILLETT: Yes, sir.

THE COURT: All right, sir. Then, that will be given by agreement?

MR. MORISSETTE: Well, I believe so, at this point, Your Honor, yes.

MR. BAKER: Yes, sir. We have no objection to it.

THE COURT: All right, then, it will given by agreement. Number three, Commonwealth's Number Three?

MR. BAKER: I don't have it.

MR. WILLETT: I just gave it to you a few seconds ago.

MR. EBERT: That's the one he just handed to you.

MR. BAKER: Okay, thank you. (Counsel examines document.)

I have no objection to it.

THE COURT: All right, sir, then as to the three that have been proffered by the Defendant, A1?

MR. EBERT: Objection to that, Your Honor.

THE COURT: All right, sir.

MR. EBERT: Your Honor, that's not a correct

* * *

[183] the bare facts of the crime." They can consider what they care to consider.

The very end of it says, "However, you may not refuse to consider the evidence that has been presented in mitigation." They can accept or reject any evidence they hear, in their judgment, and I would submit to the Court the way this is written is incorrect and I'd ask the Court to deny the instruction.

THE COURT: I'm going to deny B1, Mr. Baker. If you wish to get the definition of "mitigation" or "mitigation evidence" from Black's Law Dictionary, I'll be happy to give that definition, if that's what you wish to give them is the definition.

I certainly think this goes much further than a definition and it would be confusing. So, B1 will be denied.

MR. BAKER: Your Honor, please note my objection under the Fifth, Sixth, Eighth and Fourteen Amendments to the Constitution of the United States.

Your Honor, Mr. Morissette did C1. There's an objection to that, also, so he will argue that.



THE COURT: All right, C1. Let's see if the Commonwealth wishes to object.

[184] MR. EBERT: Yes, sir.

THE COURT: State your reason, Mr. Ebert?

MR. EBERT: If it please the Court, they've already been instructed as to what they can consider and they must find an aggravating factor and/or depravity of the mind and aggravated battery before they can sentence him to death.

But this says if they fail to prove both of the aggravating factors. There can't be but – well, there may be many aggravating factors that constitute an aggravated battery, but we're talking about aggravating factors.

That's not within the standard instructions. That's not within the law. "You may give effect to the evidence in mitigation by sentencing Defendant to life in prison." That's simply not the law. They can certainly have either option, but to say that they may give effect, the way this is written, is incorrect, and I ask for it to be denied.

THE COURT: Mr. Morissette?

MR. MORISSETTE: Your Honor, the authority for the case is Penry v. Linowe (phonetic) 492 U.S. 302. That case specifically says that the jury has to be instructed [185] that, even if they find the aggravating factors, that they must be told, even if they find the aggravating factors beyond a reasonable doubt, that they have to be instructed that they can still give effect to the evidence in mitigation by sentencing the defendant to life, as opposed to death.

That instruction, required by Penry v. Linowe – it seems as though Mr. Ebert's complaint is that the instruction we propose is unartfully drafted. I would ask the Court to amend the instruction to reflect something –

Well, actually, I think there are only two aggravating factors under Virginia law, and I think the finding instructions track two aggravating factors. Maybe we can change the words somewhat in the first part of the instruction to make it clear. We may have to make the instruction longer; I don't know.

Certainly, there must be a connection, particularly giving the finding forms in this case. There is no finding form for finding either one or both of the aggravating factors beyond a reasonable doubt, and still sentencing the Defendant to life in prison.

The finding instructions, as Your Honor well [186] knows, start out with the findings beyond a reasonable doubt of one or both of the aggravating factors in consideration of mitigation evidence in the death penalty option. But, when it comes to giving effect to the mitigation evidence, it just says that, "after consideration of the evidence in aggravation and the evidence in mitigation, we sentence the Defendant to life."

So, it is not clear to the jury that, if they find beyond a reasonable doubt that the aggravating factors have been proved, that they can still chose to sentence the Defendant to life in prison, as opposed to death.

So, for those reasons, I would ask the Court to give the proffered instruction or, as an alternative, give counsel the opportunity to amend or the Court amend it to



reflect something that would more clearly convey – or, I guess, resolve Mr. Ebert's problem with the first half of that sentence.

Clearly, they must be told that, even though they find whatever aggravating factors there are beyond reasonable doubt, they can still sentence the Defendant to life in prison, as opposed to death. I believe that's [187] required by Penry v. Linowe.

THE COURT: Mr. Ebert?

MR. EBERT: If the Court – doesn't Instruction Number Two – they are told that they – after consideration of history, background, that's one predicate upon which they can fix death. Two, that the outrageous or wantonly vile, horrible, inhumane – that's another predicate.

But, if you look from there on, "If you find from the evidence that Commonwealth has proved beyond a reasonable doubt either one of the two alternatives and you are unanimous, then you may fix the punishment of the Defendant at death or, if you believe from all the evidence you believe the death penalty is not justified" – even though we've proven that – "then you shall fix the punishment of the Defendant at life."

I would submit to the Court that certainly is clear to the jury. There can't be any question that, even if the Commonwealth bears its burden, if they feel from the evidence that death should not be imposed, they can give the alternative. I think they're adequately instructed.

THE COURT: All right, thank you, counsel. C1 [188] will be denied. I think the second paragraph in

Commonwealth's Number Two, which defense counsel has agreed upon, certainly covers what you've argued, Mr. Morissette, and that it does let them know that they can sentence someone to life.

That is the option considering all the evidence, if that's what the jury believes. That is the model jury instruction. I certainly think it accomplishes what the federal law requires.

MR. MORISSETTE: Please note my objection on the grounds of the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States, Your Honor.

THE COURT: It will be so noted, sir.

MR. MORISSETTE: Thank you, sir.

THE COURT: Counsel, that concludes all of the proffered instructions for consideration at this time.

Mr. Willett, I believe that you're going to prepare Number Two, so there will be a clean copy for the jury?

MR. WILLETT: Yes, sir.

THE COURT: All right, sir. With that, gentlemen, then we will take an evening recess. We will

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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Lonnie Weeks, Jr. – Cross

[12] Q When was it you started selling crack cocaine?

A I never really started selling crack co – I tried to.

Q Tried to sell it?

A Yes.

Q You were unable to sell it?

A Yes.

Q Why was that?

A Because we really could never get up enough money to purchase crack cocaine to make more money to buy some more.

Q Well, now, Luther Waddell says you and he both sold crack cocaine.

A Luther Waddell – I don't understand Luther Waddell when he was up here lying the way he was. But, I can't help the way that he lied.

Q He lied?

A Yes, he did.

Q If he says that you and he were making anywhere between a hundred and fifty and two hundred dollars a day selling crack cocaine, that would be a lie?

A If I was selling – if I was making a hundred and fifty, two hundred dollars a day, I would have

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PRINCE WILLIAM COUNTY CIRCUIT COURT

[Caption Omitted In Printing]

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[2] PROCEEDINGS

(Whereupon, the Court Reporter was duly sworn.)

MR. BAKER: Your Honor, I do have the instruction which you said you would allow me to prepare, with respect to mitigation, straight out of Black's Law Dictionary, and I've shown it to the Commonwealth.

THE COURT: All right, sir.

First, does the Commonwealth wish to be heard on what they propose as D-1?

MR. EBERT: I have no objection, Your Honor.

THE COURT: Let me just say, for the record, Mr. Baker, I will give your D-1 that you have proposed, or the one that you submitted yesterday, B-1. I will grant B-1, less the last sentence of B-1; so, whichever one of the two that you and Mr. Morrisette feel that you would rather have.

The Bailiff, I believe, is handing you – that's the B-1 that will be granted.

MR. BAKER: Everything except the last sentence?

THE COURT: All but the last sentence. The copy of B-1 that you have, I believe, does not have the [3] last sentence on it; the one that was omitted. Obviously, there is a last sentence there, but it's the sentence that was deleted.

MR. BAKER: Your Honor, I would prefer B-1, as you've altered it.

THE COURT: Let the record reflect then, B-1, that was submitted yesterday by the defendant, which the Court denied, will be given, less the last sentence as proposed yesterday.

Counsel, yesterday I also indicated that I would grant 1 and 3 of the Commonwealth and I still will. In reference to instruction 2 of the Commonwealth, counsel, I think that there has been an agreement to delete that portion of instruction 2 that talked about life, and a fine of up to $100,000.

The Court, after reconsideration last night, looking at the model jury instructions in the Code, I don't feel that the court is in a position to delete that. I think that it is required that it be given.

So, with that understanding, the Court is going to give instruction 2, but with the life and the fine of not more than $100,000.

At this time the Clerk is going to give you [4] the proposed copy of the verdict forms. Counsel, if you would take a moment and look at them, and be sure that there is no objection.

(Whereupon, counsel reviewed the documents.)

MR. MORRISETTE: Your Honor, I do believe we made an objection, yesterday, to the forms –

MR. EBERT: I haven't seen those before.

MR. MORRISETTE: – to the forms, collectively, on the grounds the Supreme Court case of Henry V.



Linum. We would renew that objection at this time on the grounds of the finding forms do not expressly provide for a sentence of life imprisonment, upon finding beyond a reasonable doubt, on one or both of the aggravating factors. Thank you.

THE COURT: Mr. Ebert, do you wish to respond to the objection?

MR. EBERT: Your Honor, I'd ask the Court to maintain its previous ruling.

THE COURT: All right, Sir. The Court will, as indicated before, Mr. Morrisette, I believe the second paragraph of instruction number 2, is exactly almost verbatim what you propose by way of an instruction that is [5] covered in instruction 2, that covers that very matter.

MR. MORRISETTE: Please note our exception to the Court's ruling on the –

THE COURT: It will be so noted.

MR. MORRISETTE: – on the Fourteenth Amendment to the Constitution of the United States.

THE COURT: Mr. Baker, you withdraw your D-1, since the Court has given B-1?

MR. BAKER: Inasmuch as you gave my first instruction, it is withdrawn at this time, Your Honor.

THE COURT: All right, sir. Counsel, for the record, we will be giving Commonwealth's instruction 1, Commonwealth's instruction 2, Commonwealth's instruction 3, and B-1, less the proposed last sentence.

Is there anything else counsel wishes to say concerning the verdict forms, copies of which have been given to you?

MR. BAKER: No, sir.

MR. EBERT: No.

THE COURT: At this time, then I'll ask the Bailiff to bring the jury back.

(Whereupon, at 9:10 o'clock a.m., the jury entered the Courtroom and resumed their seats in the [6] jury box.)

THE COURT: You may have a seat, if you would, please.

(Whereupon, the jury complied with the request.)

THE COURT: Good morning again, ladies and gentlemen. Yesterday, when we ended our evening recess, I gave you an instruction. I asked you please do not discuss this case with anyone, or receive any information about the case.

Let me simply ask you again, for the record, have any of you received any information about this case from any source, other than in the Courtroom; or have you discussed this case with anyone other than in the jury deliberation room?

THE JURY: (Answer negatively.)

THE COURT: Ladies and gentlemen, at this time, the Court is going to read you certain instructions. Again, I will ask you to please listen carefully as these instructions are read to you.



Copies of the instructions will be given to you for you to take back to the jury deliberation room, as will the Exhibits that have been placed into evidence.

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